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Vol. I

TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1935

No. 497

ST. JOSEPH STOCK YARDS COMPANY,
APPELLANT,

vs.

THE UNITED STATES OF AMERICA AND THE SECRETARY OF AGRICULTURE

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF MISSOURI

FILED OCTOBER 7, 1935.

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VOL. I

INDEX

	Original	Print
Record from D. C. U. S., Western Missouri	1	1
Petition	1	1
Exhibit "A"—Findings, conclusions and order of Secretary of Agriculture, Docket No. 298	32	24
Answer	167	131
Memorandum of defendants as to certain corrections to be noted in Exhibit "A" to petition	177	139
Decree	179	141
Order staying decree	180	142
Petition for supplemental findings of fact and conclusions of law	181	142
Order on petition for supplemental findings of fact, etc.	187	146
Notice of petition for appeal	188	146

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—7258-C

	Original	Print
Record from D. C. U. S., Western Missouri—Continued		
Petition for appeal	198	147
Assignments of error	202	150
Order allowing appeal	220	163
Order granting supersedeas	222	164
Bonds on appeal.....(omitted in printing)	224	
Citation .....(omitted in printing)	234	
Letter, Otis, J., to Ross D. Rynder, June 20, 1935	238	166
Notice of narrative statement of evidence, etc	245	166
Order approving narrative statement of evidence	247	167
Stipulation concerning condensed narrative statement of record and original exhibits to be transmitted to United States Supreme Court	250	168
Abstract of record before Secretary of Agriculture, Bureau of Animal Industry, Docket No. 298—Hearing held at St. Joseph, Mo., December 2 to 17, 1929	264	182
Order of inquiry and notice of hearing	275	182
Evidence offered by Government:		
Testimony of W. L. Mack	287	183
Exhibit 4-l—Valuation statement as of October, 1929	290	185
Exhibit 4-m—Supplement to appraisal	291	186
Testimony of James Christensen	321	206
F. W. Mollin	341	209
Hermann C. Henrici	378	211
H. E. Bufkin	385	215
John J. Bachmann	387	216
Charles E. Collins	405	228
Evidence offered by respondent:		
Testimony of S. F. Kosters	412	233
Wm. E. Spratt	427	235
Exhibit 4—Statement of land values	450	253
Testimony of Frank M. Atkinson	467	265
J. O. Barkley	497	270
L. R. Howson	556	273
James A. Councilor	632	333
M. J. O'Malley	740	367
C. F. Emmert	766	372
S. F. Kosters (recalled)	772	376
E. N. Carroll	780	376
R. L. Austin	791	380
Hermann C. Henrici	802	382
J. O. Barkley	811	387
S. F. Kosters (recalled)	815	389
Stipulation as to abstract	821	394
Abstract of record before Secretary of Agriculture, Bureau of Animal Industry, Docket No. 298—Rehearing held at St. Joseph, Mo., Jan. 10 to Feb. 16, 1933	822	394
Order reopening proceeding, etc.	841	394
Evidence offered by Government:		
Exhibit No. 101—St. Joseph Stock Yards Co. Tariff No. 5 and supplement thereto	845	397
Testimony of James Christensen	852	401
Hermann C. Henrici	980	419

	Original	Print
Evidence offered by Government—Continued:		
Excerpt from Exhibit 114—Inventory and appraisal	988	424
Excerpt from Exhibit 114	1006	433
Testimony of H. E. Bufkin	1021	440
John J. Bachmann	1025	443
Excerpt from Exhibit 124—Income and expenses, 1931	1037	448
Testimony of H. E. Bufkin (recalled)	1073	465
John J. Bachmann (recalled)	1075	466
John A. Zelinski	1151	472
Excerpt from Exhibit 128—Summary of land appraisal	1174	489
Respondent's exhibit 100—Contract for appraisal of land	1211	519
Testimony of H. E. Bufkin (recalled)	1276	568
John J. Bachmann (recalled)	1279	570
Balance sheet, June 1, 1931	1284	572
Table showing income and expenses, 1932	1285	573
Evidence offered by respondent:		
Statement as to exhibits	1309	577
Testimony of S. F. Kosters	1310	578
J. R. Leslie	1333	584
S. F. Kosters (recalled)	1336	587
Chester S. Churchill	1419	625
L. R. Sack	1433	636
Henry J. Saunders	1437	641
Exhibit 125—Statement showing comparison of progressive depreciation accruals under straight line and sinking fund methods	1460	660
Exhibit 127—Statement showing analysis of investment and annual depreciation accruals	1465	664
Testimony of Wm. Spratt	1597	768
Excerpt from Exhibit 132—Summary of valuation of land owned, August 1, 1932	1599	769
Excerpt from Exhibit 133—Statement showing value of land based upon average values, 1927-1932	1606	773
Testimony of Theo. J. Quinn	1635	796
Excerpt from Exhibit 134—Summary of valuation	1642	801
Testimony of Frank C. Black	1658	813
C. F. Topping	1731	816
L. R. Howson	1864	850
M. J. O'Malley	1884	866
Excerpt from Exhibit 147—Summary sheet showing net income for rate making purposes, 1932	1889	868
Excerpt from Exhibit 149—Summary of decrease in feed income, etc.	1896	872

	Original	Print
Evidence offered by Government—Continued:		
Testimony of John J. Melkowski	1910	876
Thomas C. Gorman	1912	877
Robert G. Symon	1921	885
Rebuttal evidence of Government:		
Testimony of Herman C. Henrici	1927	888
Surrebutal evidence of respondent:		
Testimony of Robert J. Stewart	1939	898
Stipulation as to abstract	1946	903
Order approving narrative statement of evidence	1947	903
Supplemental stipulation re condensed narrative statement of record and exhibits	1949	904
Præcipe for transcript of record	1951	905
Stipulation as to notice of appeal	1953-a	908
Order re inclusion of notice of appeal in record	1953-b	908
Notice of appeal	1953-c	909
Memorandum opinion and findings of facts	1954	910
Clerk's certificate (omitted in printing)	1987	
Statement of points to be relied upon and designation of parts of record to be printed	1988	938

[fol. 1] [File endorsement omitted]

[fol. 2]

IN UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF MISSOURI, ST. JOSEPH DIVISION

In Equity. No. 245

ST. JOSEPH STOCK YARDS COMPANY, Petitioner,

vs.

UNITED STATES OF AMERICA and SECRETARY OF AGRICULTURE, Defendants

PETITION—Filed May 15, 1934

To the Honorable, the Judges of the District Court of the United States for the Western District of Missouri, St. Joseph Division:

I

Your petitioner, St. Joseph Stock Yards Company, brings this petition in equity against the United States of America and the Secretary of Agriculture of the United States (hereinafter called the Secretary), for the purpose of suspending, enjoining, setting aside, and annulling a certain Order issued by H. A. Wallace, Secretary of Agriculture, entered on the 4th day of May, 1934, in a proceeding before said Secretary, conducted by the Bureau of Animal Industry of the Department of Agriculture of the United States, entitled "In Re Secretary of Agriculture v. St. [fol. 3] Joseph Stock Yards Company, Docket No. 298."

For its cause of action petitioner alleges and shows:

II

The St. Joseph Stock Yards Company is a corporation organized and existing under and by virtue of the laws of the State of Missouri, with principal office at South St. Joseph, Missouri, where it owns, maintains and operates a stockyards, which has been designated as a public stockyards by the Secretary under the provisions of the act of Congress known and cited as "Packers and Stockyards Act, 1921" (U. S. C. A. tit. 7, § 201-229).

III

The United States of America is made defendant in this suit pursuant to said Packers and Stockyards Act, 1921; the Commerce Court Act (36 Stat. L. 539), approved June 18, 1910; and the District Court Jurisdiction Act, being part of the Urgent Deficiency Appropriations Act (38 Stat. L. 219), approved October 22, 1913, and amendments thereof, said acts also appearing in U. S. C. A. tit. 28, §§ 41 (27), 41 (28), 45, 46, 48, 214 and 380. The Secretary is made a defendant in pursuance of the same acts and particularly because the order herein complained of was made by said H. A. Wallace, Secretary of Agriculture.

IV

That on, to-wit, October 9, 1929, R. W. Dunlap, then Acting Secretary of Agriculture of the United States of America, issued an order of inquiry in a proceeding known as "In re Secretary of Agriculture v. St. Joseph Stock Yards Company, Docket No. 298" (hereinafter referred to as [fol. 4] Docket No. 298); that after a hearing, an order was entered by said R. W. Dunlap in said Docket No. 298, dated July 20, 1931, reducing the rates and charges of petitioner; that, on to-wit, August 7, 1931, petitioner filed a petition in the District Court of the United States for the Western District of Missouri, St. Joseph Division, seeking to permanently enjoin and set aside said order of the said Acting Secretary of Agriculture, which injunction proceeding was entitled "St. Joseph Stock Yards Company v. United States of America and Secretary of Agriculture, In Equity No. 204" (hereinafter referred to as In Equity No. 204); that, as more fully appears in said In Equity No. 204, answer was filed, evidence received, oral arguments held and printed briefs filed, and in due course said United States District Court, on June 6, 1932, permanently enjoined the enforcement of said order (58 Fed. (2d) 290); that on, to-wit, July 19, 1932, Arthur M. Hyde, then Secretary of Agriculture, of the United States of America, issued the following order reopening said Docket No. 298 and setting it down for further hearing:

(Caption Omitted.)

"This docket was instituted by an order of inquiry and notice of hearing issued by the Acting Secretary of Agri-

culture on October 9, 1929, a copy of which was duly served upon respondent. Pursuant thereto a hearing was held beginning on December 2, and ending on December 17, 1929. Respondent was present by counsel throughout the hearing. Oral argument was had before the Acting Secretary on May 13th and 14th, 1930, and respondent submitted a brief.

On February 11, 1931, respondent filed a petition in this proceeding alleging certain general economic changes and, in detail, the particular effect of such changes upon respondent's business. The petition prayed that an order [fol. 5] be entered reopening the proceeding and setting it down for further hearing on the matters stated in the petition.

On July 20, 1931, the Secretary of Agriculture issued an order denying respondent's petition for rehearing; prescribing the schedule of maximum rates and charges and ordering that respondent make no charge for any stockyard service, rendered by it, in excess of the charge prescribed therefor in said schedule.

Thereupon, respondent filed in the District Court for the Western District of Missouri a bill alleging, among other things, that the order of the Acting Secretary, aforesaid, in denying respondent a rehearing and in prescribing a schedule of maximum rates based on the record made at the hearing in December, 1929, and without consideration of the changes alleged in respondent's petition to have occurred since the hearing, denied to respondent a full hearing and, therefore, constituted a taking of respondent's property without due process of law. The bill prayed injunctions both temporary and permanent against the enforcement of the aforesaid order of the Acting Secretary.

A temporary injunction was issued in accordance with the prayer of the bill and, after a hearing at which the Court received evidence in support of the allegations respecting changed economic conditions, the injunction was made permanent, it being the opinion of the Court that the Acting Secretary erred in denying the prayer of respondent's petition for a rehearing. The Court based its opinion in this regard upon the decision of the Supreme Court of the United States in the case of Atchison, Topeka and Santa Fe Railway Company v. United States, 284 U. S. 248, decided January 4, 1932.

In view of the above mentioned decisions, the Secretary of Agriculture is of opinion that it is his duty, under the law, to reopen this docket and hold a rehearing to the end that all parties may be given opportunity to present such evidence of changes, both general and particular, which have occurred since the year 1929 as may be material to the issues raised by the order of inquiry herein; and also the end that all parties may have opportunity to present such [fol. 6] other evidence as may be material to said issues; and further to the end that a general inquiry may be had into the reasonableness and lawfulness of each and every rate and charge, and each and every rule and regulation affecting any rate or charge stated in any and all tariffs or schedules of rates and charges filed by respondent and now in effect for stockyard services rendered by it at the St. Joseph Stockyards, South St. Joseph, Missouri, Wherefore,

It is ordered that the aforesaid order of the Acting Secretary of Agriculture entered in this docket on July 20, 1931, be and the same hereby is vacated and set aside; and that this docket be and the same hereby is reopened.

It is further ordered that a supplemental hearing herein be held before an examiner designated by the Secretary of Agriculture, in the Federal Building at St. Joseph, Mo., beginning on the 28th day of November, 1932, at 10:00 A. M., or as soon thereafter as the parties may be heard and continuing until such hearing is completed, which said hearing shall be also a general inquiry into the reasonableness and lawfulness of each and every rate and charge, and each and every rule and regulation affecting any rate or charge stated in any and all schedules of rates and charges filed by respondent, and in effect at the time of said hearing, for stockyard services rendered by respondent at the St. Joseph Stockyards, South St. Joseph, Missouri; that at such hearing all parties shall have the right to introduce further evidence competent and material to the issues raised by the aforesaid order of inquiry herein and shall also have the right to introduce evidence competent and material to the issue of the reasonableness and lawfulness of each and every rate and charge, and each and every rule and regulation affecting any rate or charge stated in any and all schedules of rates and charges filed by respondent, and in effect at the time of said hearing, for stockyard services rendered by respondent as aforesaid; and that the record heretofore made in this docket, together with all the

evidence introduced at said hearing, shall constitute the record before the Secretary of Agriculture in this proceeding.

[fol. 7] In witness whereof, The Secretary of Agriculture has hereunto set his hand and caused the official seal of the Department of Agriculture to be affixed hereto in the City of Washington, this 19th day of July, 1932.

Arthur M. Hyde, Secretary of Agriculture. (Official Seal.)"

V

That said reopened Docket No. 298 was heard by an Examiner, an employe of the United States Department of Agriculture, acting under and upon the purported authority of said Secretary, at St. Joseph, Missouri, January 10 to February 16, 1933; that subsequently, on January 6, 1934, a proposed findings, conclusions and order, prepared by counsel for the Government, was forwarded by R. G. Tugwell, Acting Secretary of Agriculture, to petitioner, with a statement that exceptions, if any, be filed by petitioner on or before February 2, 1934; that on, to wit, February 2, 1934, petitioner filed with the Secretary of Agriculture exceptions to said proposed findings, conclusions and order and, on February 26, 1934, said case was orally argued before H. A. Wallace, Secretary of Agriculture, and on the same date petitioner filed with said Secretary a memorandum in support of petitioner's said exceptions; and that on May 4, 1934, said H. A. Wallace, Secretary of Agriculture, issued certain "Findings, Conclusions and Order", which Order is hereby sought to be suspended, enjoined, set aside and annulled; that said "Findings, Conclusions and Order" are attached hereto, marked "Exhibit A", and made a part of this petition in the same manner and to the same extent as if set forth in full herein.

[fol. 8] VI

That the authority of said Secretary, and of his employes, with respect to the regulation of the rates and charges of public stockyards and with respect to said Order of May 4, 1934, is solely contained in, and is restricted to, the provisions of said Packers and Stockyards Act, 1921 (U. S. C. A. tit. 7, § 201-229), and particularly to Title III thereof.

VII

That, as more fully and specifically appears in said Findings, Conclusions and Order, hereto attached and marked "Exhibit A," said Secretary found and concluded that the rates and charges published by petitioner and duly filed in tariff form with the Secretary, as provided in said Packers and Stockyards Act, 1921, are unreasonable and unjustly discriminatory, and said Secretary by said Order prescribed lower rates and charges to be filed in tariff form with said Secretary and to be charged by petitioner for its services as a public stockyards, within thirty days from the date of said Order, said lower rates and charges being required to be published by petitioner in a tariff to be filed with said Secretary at least 10 days prior to the thirtieth day from the date of said order. That under the requirements of said order said rates must be filed by petitioner with said Secretary not later than May 24, 1934, and become effective June 4, 1934. That, if petitioner fails to comply with the terms and conditions of said Order within the time prescribed in said Order, petitioner will be subjected to heavy and severe fines and penalties as provided in said Packers and Stockyards Act, 1921; and, in addition thereto, petitioner will be subjected to numerous and vexatious suits for [fol. 9] recovery of reparation by shippers of livestock to the livestock market conducted by petitioner at South St. Joseph, Missouri.

VIII

That said rates so prescribed by said Secretary in said Order are based upon findings in said Findings, Conclusions and Order, which are not supported by any evidence of record, which are contrary to the evidence of record, and contrary to the weight of the evidence taken in said proceeding before said Examiner. That said rates, if applied in the future, will deprive petitioner of its property, without due process of law, in violation of the Fifth Amendment to the Constitution of the United States, and in violation of the law of the land.

IX

That, more specifically, said Findings, Conclusions and Order is contrary to law, confiscatory of petitioner's property, and deprives petitioner of its property without due

process of law, in violation of the Fifth Amendment to the Constitution of the United States, and is, therefore, void and of no effect, for the following reasons, to wit:

(A) That said Findings, Conclusions and Order, in so far as it determines that the rates and charges published and assessed by petitioner for its services as a public stockyards are unreasonable, is based solely upon a pretended valuation made by said Secretary, without authority of law, as a result of which said Secretary, without authority of law, has determined the value of the property of petitioner, used and useful for stockyard purposes, and has fixed a rate of return upon the pretended value so found; that said Sec- [fol. 10] retary has no authority, by statute or otherwise, to determine the value of the property, owned and used by your petitioner in the operation of said public stockyards, for rate-making purposes, and to prescribe a reasonable rate of return thereon; and that, as a consequence, said Order, based solely upon said unlawful and pretended valuation, is void, because said Secretary is without authority of law to make a valuation of petitioner's said property, or to determine what would constitute a fair return to petitioner upon the value of said property, or to determine that petitioner's rates and charges are unreasonable merely because they exceed a specified percentage of said pretended and unlawful valuation.

(B) That in said unlawful and pretended valuation of petitioner's stockyards property, said Secretary determined that the total amount of land used by petitioner in performing stockyard services was and is 101.248 acres; that the real and true amount of land used and useful by petitioner in performing stockyard services is not less than 189.556 acres; that said finding made by said Secretary is beyond the statutory power of said Secretary; is contrary to provisions of said Packers and Stockyards Act, 1921; is contrary to the evidence of record; is wholly unsupported by any evidence of record; is arbitrary; is confiscatory of petitioner's property; and deprives petitioner of its property without due process of law, in violation of the Fifth Amendment to the Constitution of the United States.

(C) That in said unlawful and pretended valuation of petitioner's stockyards property, said Secretary fixed the

value of the total amount of land found by him to be used and useful by petitioner in performing stockyards services at $647,547.84; that the real and true value of said land is [fol. 11] not less than $935,490.76; that the finding made by said Secretary is beyond the statutory authority of said Secretary; is based upon unlawful methods of land valuation; is wholly unsupported by any evidence of record; is contrary to the evidence of record; is contrary to the weight of the evidence; is arbitrary; is confiscatory of petitioner's property; and deprives petitioner of its property without due process of law, in violation of the Fifth Amendment to the Constitution of the United States.

(D) That in the performance of its stockyard services, petitioner requires 189.556 acres of land; that in said unlawful and pretended valuation of petitioner's stockyards property said Secretary deducted from said land 88.308 acres; that said Secretary, in connection therewith, deducted from the value of petitioner's property the value placed upon said 88.308 acres by the land appraisers employed by said Secretary as well as by the appraisers employed by petitioner, thereby depriving petitioner of a lawful property value for the purpose of making rates of $356,263.33; that said Secretary has no authority of law to determine the amount of land to be used by petitioner in connection with the performance of its stockyard services; or to determine the business activities in which petitioner may lawfully engage in connection with its operation of its public stockyards; or to determine the amount of land which may reasonably be held by petitioner for expansion purposes; or to determine the amount of land which may be used as a basis for making the rates charged by petitioner; that said finding made by said Secretary with respect to the land used and useful is an abuse of power by said Secretary; is not authorized by any statute of the United States; is unsupported by evidence; is contrary to the evi- [fol. 12] dence; is contrary to the weight of the evidence; is arbitrary; is confiscatory of petitioner's property; and deprives petitioner of its property without due process of law, in violation of the Fifth Amendment to the Constitution of the United States.

(E) That in said Findings, Conclusions and Order of said Secretary, the amount found in said unlawful and pre-

tended valuation as the present cost of reproduction less depreciation of certain portions of petitioner's property, other than land, which said Secretary classified as used and useful, is unlawful and void; because said Secretary fixed the depreciated value of said property at $2,039,616, whereas the real and true depreciated value of said property is not less than $2,900,113, thereby depriving petitioner of its property in the sum of $860,497; and because said Secretary discarded and disallowed from the value of petitioner's property for rate-making purposes certain property held by said Secretary to be not used and useful for stockyard services, such as a building used for a stockyards hotel, a building wherein a harness shop is operated and a stockyard journal is published, a garage, and various and sundry other items of petitioner's property used by it in connection with the operation of its public stockyards, the cost of reproduction less depreciation of which excluded property is not less than $231,151; and that said Findings, Conclusions and Order of said Secretary with respect to the cost of reproduction new, less depreciation, of petitioner's stockyards property is unsupported by the evidence of record; is contrary to the evidence of record; is contrary to the weight of the evidence; is arbitrary; is confiscatory; and deprives petitioner of its property without due process of law, in violation of the Fifth Amendment to the Constitution of the United States.

(F) That in said unlawful and pretended valuation of [fol. 13] petitioner's property, said Secretary found that no allowance should be made for what are generally known as pre-organization expenses and cost of financing, although the evidence in said hearing showed the reasonable amount of pre-organization expenses to be at least $57,000 and the reasonable cost of financing to be at least $137,150; that said finding is unsupported by the evidence of record; is contrary to the evidence of record; is contrary to the weight of evidence; is arbitrary; is confiscatory; and deprives petitioner of its property without due process of law, in violation of the Fifth Amendment to the Constitution of the United States.

(G) That in said unlawful and pretended valuation of petitioner's stockyards property, said Secretary found that no allowance should be made for going concern value of

petitioner's property; that no evidence with respect to the going concern value of petitioner's property was offered in said hearing on behalf of said Secretary; that the only evidence offered in said hearing with respect to the going concern value of petitioner's stockyards property was that offered on behalf of petitioner; that the undisputed evidence of record in said hearing establishes that petitioner's stockyards property has a going concern value of not less than $294,000; that said evidence on behalf of petitioner has been unlawfully disregarded by said Secretary in his said Findings, Conclusions and Order, thereby depriving petitioner of its property in the sum of $294,000; that the action of said Secretary in depriving petitioner of its going concern value in the sum of $294,000 is unsupported by any evidence of record; is contrary to the only evidence of record; is contrary to the weight of the evidence; is arbitrary; is confiscatory; and deprives petitioner of its property without due process of law, in violation of the Fifth Amendment to the Constitution of the United States.

[fol. 14] (H) That, with respect to the amount to be set aside annually as a depreciation reserve in connection with the operation of petitioner's public stockyards property, the evidence of record in said proceeding shows that, upon methods of depreciation universally followed throughout the United States in both regulated and unregulated businesses, the amount which should be allowed annually as a part of petitioner's operating expenses for depreciation of its property is not less than $100,000; that said Secretary has in lieu thereof allowed to petitioner only $41,500; that said Secretary is without statutory authority to determine the manner in which an annual depreciation reserve shall be set aside as a part of the operating expenses of petitioner nor the amount thereof; that said unlawful finding of said Secretary would result in depriving petitioner of its lawful income in an amount not less than $58,500 per annum; that the findings in connection therewith contained in paragraphs 173-177, inc., of said Findings, Conclusion and Order are not supported by or based upon any evidence of record in said hearing; that the attempted determination by said Secretary of the amount to be allowed to petitioner annually as a depreciation reserve and for repairs, maintenance, etc., is without authority of law in the Packers and Stockyards Act, 1921, which is the only law of the United States

conferring any authority upon said Secretary with respect to the regulation of petitioner's charges; that said Findings, Conclusion and Order with respect to the annual amount of depreciation reserve and for maintenance, etc., is unsupported by any evidence of record; is contrary to the evidence of record; is contrary to the weight of the evidence; is arbitrary; is confiscatory; and deprives petitioner of its property in the amount of $58,500 per annum, without due process of law, in violation of the Fifth Amendment to the Constitution of the United States.

[fol. 15] (I) That in said Findings, Conclusions and Order, and particularly in paragraph 181 thereof, said Secretary has revised, restated and reduced the expenses properly incurred by petitioner in the operation of its business as a public stockyards by amounts not less than $439,438.22 for the year 1931 and $327,107.58 for the year 1932, and in even greater amounts for the years 1927-1930, inclusive; and that, instead of the amounts stated as petitioner's operating expenses in said paragraph, the real and true expenses incurred by petitioner in the operation of its public stockyards in the year 1931 were $743,203.94 and in the year 1932 $616,646.91; and that the operating expenses so incurred by petitioner were greater than said amounts in the years 1927-1930, inclusive; that said erroneous reduction was accomplished by omitting some of the expenses actually incurred by petitioner and by eliminating others; that said action by said Secretary, in unlawfully and improperly revising, restating and reducing the actual and true operating expenses of petitioner for the years 1927-1932, inclusive, results in the statement of conclusions by the Secretary as to the reasonableness of petitioner's rates and charges which, if permitted to become effective, would unlawfully deprive petitioner of an amount not less than $100,000 per annum necessary to meet its reasonable operating expenses; that in determining that petitioner's rates and charges are unreasonable, said Secretary has erroneously taken into consideration the result of petitioner's operations of its public stockyards over a period of years, namely, 1927-1932, inclusive, during which the gross volume of business transacted by petitioner, both as to yardage and feed sales, and in other respects, was much greater than that transacted during the year 1932 or the amount which can reasonably be expected to be transacted in the future; and that

[fol. 16] any conclusion based upon the average earnings of petitioner during said period of years would result in the confiscation of petitioner's property from and after the effective date of said order; that, although said Secretary has based his conclusion as to the unreasonableness of petitioner's rates upon consideration of earnings during a period of years during which petitioner's earnings were much greater than they were in the year 1932 or can reasonably be expected to be in the future, nevertheless, the value determined for petitioner's property by said Secretary did not represent an average value for said years, but as stated, in said Findings, Conclusions and Order, represented a spot value as of August 1, 1932; that, based upon cost of reproduction less depreciation as determined by the Secretary, said spot value as of August 1, 1932, represented a value much lower than the average real and true value of petitioner's property during said years 1927-1932, inclusive; that the Secretary found in said Findings, Conclusions and Order that the cost of reproduction less depreciation of petitioner's structures, using spot prices as of August 1, 1932, was $2,039,616, whereas the average fair value of petitioner's structures during said years 1927-1932, inclusive, was not less than $3,204,122; that the action of the Secretary recited in this paragraph is unsupported by the evidence of record; is contrary to the evidence of record; is contrary to the weight of the evidence; is arbitrary; exceeds the power of said Secretary; is confiscatory of the property of petitioner; is without due process of law; and deprives petitioner of its property, without due process of law, in violation of the Fifth Amendment to the Constitution of the United States.

(J) That in said Findings, Conclusions and Order of said Secretary, said Secretary has determined that a fair rate of return upon the fair value of the property used by peti- [fol. 17] tioner as a public stockyards shall be 7 per cent. per annum, and has undertaken to fix rates to be charged by petitioner upon said basis; that said Secretary is without authority of law, statutory or otherwise, to determine what constitutes a fair rate of return upon the fair value of the property used by petitioner as a public stockyards; that said Secretary is without authority of law, statutory or otherwise, to determine that petitioner's rates and charges are unreasonable merely because they exceed the 7

per cent. annually upon the unlawful and pretended valuation of said property by said Secretary; that no evidence with respect to said rate of return was offered at said hearing on behalf of said Secretary upon which said Secretary could lawfully reach a conclusion as to a proper and lawful rate of return upon the fair value of the property used by petitioner as a public stockyards; that the evidence on behalf of petitioner at said hearing established that the fair rate of return upon the fair value of petitioner's said property under the circumstances and conditions existing in and about St. Joseph and South St. Joseph, Missouri, and the conditions affecting the business conducted by petitioner, and necessary to enable petitioner to maintain and support its credit and enable it to obtain the money necessary for the discharge of its duties, would be much in excess of 7 per cent per annum; that said finding of said Secretary is unsupported by the evidence of record; is contrary to the evidence of record; is arbitrary; is confiscatory of petitioner's property, without due process of law, in violation of the Fifth Amendment to the Constitution of the United States.

(K) That the real and true value of the property owned and used by petitioner in the performance of its stockyard services is not less than $4,500,000; that the amount allowed for net operating income by said Secretary in said Find-
[fol. 18] ings, Conclusions and Order is $192,010 per annum, which would result in a return to petitioner of approximately 4.27 per cent upon the fair value of petitioner's property so used as a public stockyards; that petitioner's property would thereby be confiscated, without due process of law, in violation of the Fifth Amendment to the Constitution of the United States, if said order of said Secretary is permitted to be made effective.

(L) That, as appears in paragraphs 196, 201, 206, 207 and 208 of said Findings, Conclusions and Order, the rates and charges prescribed by the Secretary are based upon the assumption that petitioner will change its practice in respect to charges made to a certain class of patrons commonly known as traders or speculators; that the Secretary does not make any finding that the present practices of petitioner are either unreasonable or unjustly discriminatory; that the Secretary has ordered the rates and charges

of petitioner reduced in part on the assumption that it will receive additional revenue from a new source; that the Secretary, in said Findings, Conclusions and Order, has charged against petitioner's income a toll which it does not exact, and the Secretary has no power to require petitioner to exact said charge; that there is no evidence of record in said hearing upon which said Secretary could determine the amount of yardage charges, if any, which should be charged against said traders or speculators, or how much said charges would yield to petitioner; that basing the reduction of petitioner's rates in part upon additional revenue to be derived from traders and speculators is in abuse of power and in excess of the statutory power of the said Secretary; is arbitrary; and is confiscatory of petitioner's property, without due process of law, and in violation of the Fifth Amendment to the Constitution of the United States.

[fol. 19] (M) That in paragraphs 197, 206, 207 and 208 of said Findings, Conclusions and Order of said Secretary (as more fully set forth in "Exhibit A" attached hereto) a finding is made that the rates and charges now in effect for feed lot yardage are unjustly discriminatory, because the shippers of livestock who consign their animals to commission men are charged more by petitioner for the use of its facilities in handling such livestock for a shorter period of time than are those who use the feed lots for a longer period of time; that said finding is without any support whatsoever in the evidence of record in said hearing before said Secretary; that there is no evidence of record in said hearing upon which said Secretary could determine the amount of yardage charges, if any, which should be charged for the use of the fe-d lots; that said finding of the Secretary is contrary to and ignores the undisputed evidence that the feed lot facilities are used in connection with the general facilities of petitioner and produce a part of the general yardage income, and that the two services are not rendered under substantially similar circumstances and conditions; that although said Secretary made said finding of unjust discrimination, the order permits petitioner to continue to impose the same charge for feed lot yardage; that said Secretary's sole power, as provided in said Packers and Stockyards Act, 1921, in cases of unjust discrimination, is to issue an order to cease and desist from said unjust discrim-

ination; that all unjust discriminations are forbidden by said act; and that, if the so-called concession to users of the feed lots is one which petitioner may continue, if it desires to do so, as authorized by said Secretary, said practice cannot constitute an unjust discrimination within the meaning of said act; that said findings, herein referred to, are void and of no effect, because made without a full hearing with respect thereto, as required by law; because unsup- [fol. 20] ported by any evidence of record, and in violation of the Packers and Stockyards Act, 1921.

(N) That in paragraph 207 of said Findings, Conclusion and Order, said Secretary prescribes purported maximum reasonable rates and charges for various services rendered by petitioner in its operation of its stockyards, said rates and charges varying in amounts according to the particular type of service rendered; that said rates and charges constitute in some instances reductions in varying percentages from the rates and charges now made by petitioner, in other instances are the same as the rates and charges now made by petitioner, and in other instances exceed the charges now made by petitioner; that said finding prescribing said purported maximum reasonable rates and charges for the services rendered by the petitioner, and the varying percentages of reduction and increase, are unsupported by the evidence of record in said hearing; are contrary to the evidence of record; are contrary to the weight of evidence; are arbitrary; and are confiscatory of petitioner's property, without due process of law, and in violation of the Fifth Amendment to the Constitution of the United States.

(O) That on February 2, 1934, petitioner filed with the Secretary, in the proceedings then pending before him under said Docket No. 298, a petition entitled "Petition for Re-Opening and Further Hearing." Said petition, omitting the caption, is in words and figures as follows, to-wit:

"Comes now respondent in the above entitled proceeding, by Ross Dean Rynder and William N. Strack, its attorneys, and respectfully petitions the Secretary of Agriculture that the above entitled proceeding be reopened for further hearing and taking of testimony, for the following reasons:

That the hearing in this proceeding was closed on February 16, 1933; that the inventory and appraisal made by [fol. 21] the Government's engineers and respondent's en-

gineers represented the cost of reproduction new of respondent's structures as of August 1, 1932, and that the financial results of the operation of its stock yards by respondent are shown in the present record only up to the end of the calendar year 1932; that since said dates there have been such substantial changes in circumstances and conditions which affect the value of respondent's property, its income, the probable receipts of live stock and expenses at its yards, that said record no longer represents fairly the present conditions affecting respondent's operations, nor does it afford a proper basis for an estimate of respondent's income and expenditures during the period within which an order such as is proposed herein would be in force. Said changes have been of such an extraordinary and unusual character that they could not possibly have been foreseen or predicted during the time when the hearing in this case was being held. These unusual circumstances and conditions are more specifically described as follows:

I

On May 12, 1933, after the close of the hearing in this case, there was enacted by Congress what is known as the Agricultural Adjustment Act, U. S. C. A., tit. 7, sec. 601 to 619; that said act gave the Secretary of Agriculture new and extraordinary powers in connection with the production and sale of various agricultural products, including live stock; that by sec. 609 of said act, the Secretary of Agriculture was authorized to levy processing taxes upon hogs and upon certain other agricultural commodities; that since said act was passed the Secretary of Agriculture has levied processing taxes in connection with the purchase of hogs for slaughter and has announced a program, the avowed purpose of which is, by the use of said processing taxes and otherwise, to reduce the number of hogs to be marketed during the future; that it has been definitely announced by the Secretary of Agriculture that by means of the disposition to be made of the processing tax, through hog and corn reduction programs, and other extraordinary [fol. 22] powers granted to him in said act, the Government expects to bring about a reduction of at least 25 per cent in the number of hogs which will be marketed in the future. Assuming that the Government will be successful in the program which it has adopted, it is fair to assume that the

number of hogs brought to respondent's stock yards in the future will be reduced by at least 25 per cent per annum below the level which might be expected, based upon past experience. Under the provisions of sec. 615 of said act, and also by means of a specific amendment to said act, various efforts are being made at the present time to have included as basic commodities, under said act, cattle and sheep which would thereupon become subject to the powers of the Secretary to take such action as he may consider necessary to provide for a reduction in the number of such animals to be marketed. It is reasonable to suppose that this would effect further reductions in the amount of live stock which would be received at respondent's stock yards. Respondent avers that it will be denied the full hearing contemplated by law, to its damage, if it is not permitted to offer in evidence all of the facts now available in support of the allegations hereinabove set forth.

II

On June 16, 1933, after the close of the hearing in this proceeding, there was enacted by Congress what is known as the National Industrial Recovery Act, U. S. C. A., tit. 15, sec. 701 to 712. Under the provisions of said act, the President was given new and extraordinary powers to do many things for the purpose of industrial recovery. Under the provisions of said act respondent, together with other public stock yards, was required to sign a code, effective in August, 1933, which substantially increased the amount of compensation paid to its employees, and which increased its operating expenses. As a further outgrowth of the labor and economic conditions existing at the present time, respondent was required to increase wages paid to its employees by a further increase of 10 per cent, effective in December, 1933; that on or about January 15, 1934, a de- [fol. 23] mand was served upon respondent by an organization of its employees, demanding still further increases in wages and reductions in working hours, all of which will substantially affect and increase respondent's operating expenses in the future; that the full effect of the facts stated in this section of the petition upon respondent's annual operating expenses would be an increase of at least $53,400.00 over and above its necessary operating expenses as

indicated at the close of the hearing in this proceeding. Respondent avers that, if it is not permitted to establish of record the facts alleged in this section of this petition, it will be deprived, to its damage, of the full hearing contemplated by law.

III

By action of the President of the United States, as well as by an act of Congress, approved January 30, 1934, the currency of the United States is no longer upon the gold standard and the President has been authorized by said act to reduce the gold content of the dollar to not less than 50 per cent nor more than 60 per cent of its value in gold at the time of the close of the eharing in this proceeding; that the avowed purpose of the Government in this respect is to bring about an increase in commodity prices, and there must necessarily follow also necessary increases in wages; that the cost of reproduction new and less depreciation of respondent's structures, as testified to by the engineers of the Government and respondent in this proceeding, were based upon their studies made prior to such devaluation of the dollar and are much less than the fair and true value expressed in dollars of respondent's structures at the present time. In addition thereto, respondent's yardage rates are now stated in cents per head of live stock and its feed rates in cents per unit of measure, and it is so proposed to state respondent's charges in the proposed report in this proceeding. As a result of the devaluation of the dollar, it will necessarily follow that the fair value of respondent's property, both land and structures, as expressed in dollars, will, for a reasonable period in the future, be much greater than that determined by the engineers and [fol. 24] appraisers who testified in this case, and respondent's operating expenses will necessarily be much greater because a greater number of dollars will be necessary in order to pay for the materials and obtain the services necessary to the operation of respondent's stock yards. In this connection, respondent avers that the cost of reproduction of its property has already increased 25 per cent since August 1, 1932, the date of the appraisals used in this proceeding, due to increase in material and labor prices and construction costs. Respondents aver that, if it is not permitted to establish of record the facts alleged in this section

of this petition, it will be deprived, to its damage, of the full hearing contemplated by law.

IV

Since the close of the hearing in this proceeding respondent's books and records indicate the full and complete results of the income and expenses of its operations for the calendar year 1933; that for the year 1933 respondent's gross income, excluding yardage on Government pigs and piggy sows, a nonrecurring item, was only $614,332.33, excluding also income classified as outside income in the proposed report herein. Deducting from this amount the $442,200.00, recommended in the proposed report herein as reasonable operating expenses, left respondent only $172,132.00 as net operating income for rate making purposes for the year 1933, which is substantially less than the amount recommended in the proposed report herein of $190,050.00 as fair net operating income. Had respondent's actual expenses been deducted after eliminating outside expense, bond interest, bond discount, fiscal agent's expense and interest, respondent's net operating income for the year 1933 would have been only $111,152.36, which is approximately $79,000.00 less than the reasonable net operating income recommended in the proposed report herein. Respondent avers that, if it is not permitted to establish of record the facts alleged in this section of this petition, it will be deprived, to its damage, of the full hearing contemplated by law.

[fol. 25]

V

For the reasons hereinbefore stated, and in view of the facts herein alleged, respondent avers that if an order is made by the Secretary, based upon the record of the hearing which closed on February 16, 1933, and respondent is denied the right to make proof of the changed conditions which have affected the business of respondent since said hearing was closed, respondent will be denied the full hearing authorized by law and its property will be subjected to confiscation in violation of the Fifth Amendment to the Constitution of the United States.

Respectfully submitted, Ross Dean Rynder, William N. Strack, Attorneys for Respondent.

January 30, 1934."

"State of Missouri,
County of Buchanan, ss:

C. F. Topping, being first duly sworn according to law, deposes and says that he is President and General Manager of the St. Joseph Stock Yards Company, respondent in the above entitled proceeding; that he has read the foregoing petition of respondent for reopening and further hearing and, upon facts appearing in the records of respondent and upon information and belief, he verily believes the allegations set forth in said petition are true.

C. F. Topping.

Subscribed and sworn to before me, a Notary Public, state and county aforesaid, this 29th day of January, A. D. 1934. J. E. Johnson, Notary Public. My commission expires March 8, 1934. (Seal.)"

That, as a part of said Findings, Conclusions and Order, said Secretary denied said Petition for Re-Opening. That in said Findings, Conclusions and Order, it appears that the findings made by said Secretary are based upon conditions [fol. 26] which existed with respect to the business of petitioner, including its income, expenses and other pertinent matters, during a number of years prior to and including 1932; that the order prescribed in said proceeding by said Secretary is to become effective in June, 1934; that, as more particularly appears in said Petition for Re-Opening, circumstances and conditions, including the nature of the services rendered by petitioner in operating its public stockyards, and its income and expenses in connection therewith, have materially changed since the year 1932 and preceding years; that the net operating income of petitioner for the year 1933 was $179,823.82, which is less than the reasonable net operating income which said Secretary found petitioner entitled to obtain as a fair return upon its property devoted to stockyards use; that said net operating income for the year 1933 is substantially less than the amount found by the Secretary to be a fair return on the fair value of petitioner's used and useful property; that the action of said Secretary in denying petitioner an opportunity to establish the facts stated in said Petition for Re-Opening was arbitrary; that, contrary to law, said Secretary has made and included in said Findings, Conclusions and Order certain facts concerning petitioner's operations, expenses and income dur-

ing the year 1933 (which is since the close of the hearing in said proceeding), and has included said findings in paragraphs 6e-6g, inclusive, thereof; that it was the lawful duty of said Secretary to permit petitioner, prior to his final decision in this case, to offer evidence in said proceeding for the purpose of establishing the allegations of said Petition for Re-Opening; that by said arbitrary action petitioner has been denied the full hearing in this proceeding required by statute; that the denial of said Petition for Re-Opening and the findings of the Secretary in connection therewith, [fol. 27] constituted an abuse of power on the part of said Secretary, contrary to the statute; and that said action of said Secretary upon said Petition for Re-Hearing will result, if said order is permitted to become effective, in confiscation of petitioner's property, without due process of law, in violation of the Fifth Amendment to the Constitution of the United States.

(P) That, as a part of said Findings, Conclusions and Order, said Secretary finds the fair value of petitioner's property used and useful in the rendition of service in connection with its stockyards to be $2,743,000, and that a fair and reasonable net annual return thereon would be $192,010; that had the rates and charges prescribed by said Secretary in said Findings, Conclusions and Order been in force and effect during the year 1932, petitioner's net operating income would have been not more than $72,219.03; and had said rates and charges been in effect during the year 1933, its net operating income would have been not more than $127,791.39; that the net operating income of petitioner under the rates and charges prescribed by said Secretary would have been for the year 1932 and the year 1933, the amounts set forth above, which, respectively, are but a return of 2.63 per cent and 4.66 per cent upon the fair value of petitioner's property, as found by said Secretary, and but a return of 1.60 per cent and 2.84 per cent, respectively, upon the real and true value of the property used by petitioner in performing stockyard services; that it will be impossible for petitioner to charge or collect the increased charges for feedlot yardage or from traders or speculators, as estimated by the Secretary in determining a fair return; that after deducting the estimated increased income from feedlot yardage and traders and speculators, as determined by the Secretary, petitioner's net operating income for the

[fol. 28] year 1932 was not more than $53,814.65 and for the year 1933 was not more than $100,060.06; that upon said basis, which represents the maximum income which petitioner could have received under said order, petitioner would have obtained a return of but 1.96 per cent in 1932 and but 3.65 per cent in 1933 upon the fair value of petitioner's property as found by said Secretary; and a return of but 1.2 per cent in 1932 and 2.22 per cent in 1933 upon the real and true value of the property used by petitioner in performing stockyard services; that petitioner's property would thereby be confiscated, without due process of law, in violation of the Fifth Amendment to the Constitution of the United States.

(Q) If your petitioner fails to comply with said order of said Secretary, it may be subject to prosecution and incur liability for penalties in an amount of $500 a day, as against which liability your petitioner will have no adequate protection at law. On the other hand, if your petitioner, in order to avoid such liability for penalties, under duress, publishes and establishes the rates specified in said order of said Secretary, it will be required by law to collect those rates and no others. The substitution of said rates and charges, specified in said order of said Secretary, for the rates now in effect will result in great reductions in the revenues of your petitioner, such reductions approximating $80,000 per year. If later it shall finally be determined that said order of said Secretary is null and void, your petitioner will be without any means of collecting the difference between said rates prescribed by said Secretary and its present rates, if pending such final determination the said Findings, Conclusions and Order of said Secretary is permitted to become effective and your petitioner is required to publish and establish the rates therein specified. Therefore, if said order of said Secretary is not suspended, en- [fol. 29] joined, set aside and annulled, and if pending final determination herein, its enforcement is not temporarily stayed and suspended, your petitioner will suffer irreparable injury, for which it will be without adequate remedy or protection at law.

Wherefore, petitioner prays:

(1) That a writ of subpœna issue immediately out of and under the seal of this Court, and be directed to said

defendants, the United States of America and the Secretary of Agriculture, requiring said defendants, on a day certain therein to be specified, to be and appear before this Court and to answer this bill, but not under oath, answer under oath being hereby expressly waived;

(2) That this Court direct that due and proper notice of this petition and proceeding issue and be served forthwith, as prescribed in said Act of October 22, 1913 (28 U. S. C. A., Secs. 41 (28) and 43 to 48, inclusive);

(3) That a court constituted as required by said act of October 22, 1913 (28 U. S. C. A., Sec. 47) be convened and that said court so constituted and convened shall hear this petition upon due and legal notice to defendants;

(4) That upon the filing of this bill, the Judge of this Court shall call to his assistance two other Judges, one of whom shall be a Circuit Judge, and that upon three days' notice to defendants, this Court shall enter its order staying and suspending the enforcement, operation or execution of said order of said Secretary, and each and every part thereof, for sixty days from the date of said order; and that after five days' notice of the time and place of hearing having been given to defendants, petitioner herein be granted a temporary injunction restraining the said Secretary from enforcement of said order of May 4, 1934;

[fol. 30] (5) That this Court, upon final hearing of this suit, enter a decree herein permanently suspending, enjoining, setting aside, and annulling the said Order of said Secretary;

(6) That petitioner have and recover of the defendants the proper costs of this suit; and

(7) That the petitioner have such other and further relief in the premises as the equity may appertain and as may be deemed by this Court fit and proper.

William N. Strack, Union Stock Yards, Chicago, Ill.; Ross Dean Rynder, Union Stock Yards, Chicago, Ill.; Culver & Phillips, St. Joseph, Mo., Solicitors for Petitioner.

[fol. 31] *Duly sworn to by C. F. Topping. Jurat omitted in printing.*

[fol. 32] EXHIBIT "A" TO PETITION

UNITED STATES OF AMERICA:

Before the Secretary of Agriculture,

Bureau of Animal Industry

Docket No. 298

SECRETARY OF AGRICULTURE

v.

ST. JOSEPH STOCK YARDS COMPANY, Respondent

Findings, Conclusion and Order

I

Proceedings

1. This proceeding is a general inquiry under the Packers and Stockyards Act, 1921, as amended, into the reasonableness and lawfulness of the rates and charges of respondent for the stockyard services rendered by it at its stockyard at South St. Joseph, Missouri.

2. The proceeding was initiated by an order of inquiry and notice of hearing issued by the Acting Secretary of Agriculture on October 9, 1929. Said order and notice alleged that respondent was engaged in the business of conducting or operating a stockyard at South St. Joseph, Missouri, which had been ascertained by the Secretary of Agriculture to be a "stockyard" within the definition thereof as used in Title III of the Packers and Stockyards Act, 1921, as amended, and posted as such; that, in accordance with the requirements of said Act, respondent had theretofore filed and put into effect schedules of rates and charges for its services as a stockyard owner; that on September 30, 1929, respondent made and published Tariff No. 5, which was filed with the Bureau of Animal [fol. 33] Industry to become effective October 10, 1929; and that a proceeding under Title III of the Packers and Stockyards Act, 1921, as amended, should be had for the purpose of determining the reasonableness and lawfulness of said schedule of rates and charges as set out in Tariff No. 5. Accordingly, it was ordered that a hearing upon

the reasonableness and lawfulness of said rates and charges be held at a time and place specified in said order and notice. Notice of such hearing was given to respondent by serving upon it a copy of said order and notice.

3. Pursuant to the aforesaid order and notice, a hearing was held at St. Joseph, Missouri, before an examiner designated by the Secretary of Agriculture, which hearing began on the 2nd day of December, 1929, and was concluded on the 17th day thereof. Respondent was present by counsel throughout the hearing. Oral argument was had before the Acting Secretary of Agriculture, on the 13th and 14th day of May, 1930, and respondent submitted a brief.

4. On February 11, 1931, respondent filed a petition praying that, for reasons therein stated, an order be entered reopening the proceeding and that it be set down for further hearing on the matters stated in the petition. This petition was denied. The "Findings, Conclusions and Order" was issued by the Acting Secretary of Agriculture on July 20, 1931.

5. Respondent thereupon filed in the District Court for the Western District of Missouri a bill alleging, among other things, that the order of the Acting Secretary in denying the respondent a rehearing and in prescribing a schedule of maximum rates based on the record at the hearing in December, 1929, and without consideration of the changes alleged in respondent's petition to have occurred since the hearing, denied to the respondent a full hearing and, therefore, constituted a taking of respon- [fol. 34] dent's property without due process of law. The bill prayed injunctions both temporary and permanent against the enforcement of the order of the Acting Secretary. A temporary injunction was issued in accordance with the prayer of the bill and after a hearing at which the court received evidence in support of the allegations respecting changed economic conditions the injunction was made permanent. The court was of the opinion that the Acting Secretary of Agriculture erred in denying the prayer of the petition of the respondent for a rehearing.

6. In accordance with the opinion of the court, on July 19, 1932, the Secretary of Agriculture issued an order reopening the case and set it down for hearing beginning the 28th day of November, 1932. This date was continued

and the hearing was held beginning January 10, and concluding February 16, 1933.

6a. On January 6, 1934, counsel for the Government submitted to the Secretary of Agriculture, for his approval and signature, a proposed order finding that respondent's rates and charges are unreasonable and unjustly discriminatory and prescribing reasonable and non-discriminatory rates. On the same day a copy of the proposed order was transmitted to counsel for respondent and they were given until February 2, 1934, to file such exceptions to the proposed order as they might desire. On February 2, 1934, respondent filed twelve general, and one hundred specific exceptions to the proposed order. At the same time it filed a petition for a rehearing. On February 26, 1934, the matter was argued before the Secretary of Agriculture by counsel for the Government and for the respondent and, at the same time, each submitted a brief.

6b. Careful consideration has been given to each and every exception filed by respondent. Certain of the ex- [fol. 35] ceptions were well taken and they are reflected in these findings, conclusions and order. Other of the exceptions were without merit and are overruled.

6c. The petition for rehearing is upon the ground that since the date of valuation, August 1, 1932, and the closing of the audit of respondent's financial operations, December 31, 1932, there have occurred changes of such extraordinary character affecting the value of respondent's property, and its income, expenses and probable receipts of livestock at its stockyard that the record herein no longer fairly reflects these matters. Four such changes are alleged specifically. They are:

(a) The Governmental program for the reduction and limitation of livestock production;

(b) That part of the Governmental program for industrial recovery which seeks to increase wages and shorten working hours of employees and has brought about increases in respondent's payrolls;

(c) Departure from the gold standard for the currency of the United States and reduction of the gold content of the dollar to cause increases in commodity prices; and

(d) The results of respondent's operations in the year 1933, which, upon the basis of income for rate making purposes and reasonable expenses as characterized in the proposed order, are alleged to have produced a net operating income some $18,000 less than the fair net operating income found in the proposed order.

6d. While it is hoped and expected that the programs for recovery through the increase of agricultural and other commodity prices by controlling agricultural production and reducing the gold content of the dollar will accomplish their purposes, these programs presently are experimental. Even if they succeed, as planned, their actual effect on re- [fol. 36] spondent's particular business is problematical. Even if a rehearing were granted, all that could be adduced thereat would be opinions which would not be sufficiently expert to constitute evidence and the record would be no more informative than it now is. If, and when any of the recovery programs shall have brought about changes under which respondent's net income appears to have fallen, with reasonable permanency, below a fair return on the fair value of its property used and useful in the rendition of the services for which the prescribed rates are charged, the Secretary of Agriculture will, upon petition therefor, grant a rehearing or increase the rates as justice shall then appear to require.

6e. Investigation has been made of the allegations in Paragraph II of respondent's petition respecting increases in respondent's operating expenses through increased compensation to its employees, brought about by the Governmental program for industrial recovery and through the recovery which has resulted from that program. This investigation consisted chiefly of ascertainment by accountants of the Department of Agriculture from respondent's records of the amounts expended as compensation to employees since the alleged increases and a comparison of these amounts with the allowances in the proposed order to cover such expenditures. The investigation was made over the protest of respondent that to consider the result of it, without giving respondent opportunity to cross-examine the Department's accountants and to present evidence on its own behalf, would deny to it the full hearing provided by the Packers and Stockyards Act, 1921, and

would invade its constitutional rights. In the determinations hereinafter made respecting respondent's rates and charges and those prescribed for respondent as reasonable [fol. 37] and non-discriminatory no consideration is given to this, or any other information which is not contained in the record made at the hearings heretofore held. However, for the purpose of decision as to the granting or denial of respondent's petition for rehearing, it is deemed proper to consider the information obtained by the informal investigation. If this be not true, it must follow that either the Secretary is bound to pass upon the petition without investigation or else is required to grant a rehearing to determine whether he should grant a rehearing.

6f. Hereinafter it is found that respondent's reasonable operating expenses, other than repairs, provision for depreciation reserve and taxes, will be $302,500. This amount was arrived at by a process of drawing "normals" from respondent's actual experience in each of the years 1927 to 1932, respectively, in light of the record as a whole, and aggregating those normals. The "normals" so found to cover the outstanding items of payroll aggregate approximately $210,000. In addition, small amounts of payroll are included in "normals" found for certain other items and included in the reasonable expenses. In September, 1932, respondent made certain decreases in its rates of salaries and wages. In June, 1933, it effected certain other decreases. In August, 1933, it made certain increases in these items and again did so in December, 1933. The net result of these decreases and increases is that the rates of salaries and wages are not now as great as they were prior to the decrease of June, 1932. For the year 1933, the outstanding items of payroll, which made up the $210,000 included in the amount found for reasonable expenses aggregated $179,428.36. The total payroll for that year was $203,145. For January and February, 1934, when all increases were in effect, the total payrolls were $18,425.93 and $17,276.34, respectively. The average is $17,[fol. 38] 851.14. The monthly average of the allowance to cover the outstanding items of payroll is $17,501.90, but in the January-February, 1934 average, there are $877.13 for repairs. The January-February, 1934 outstanding payroll items aggregated for January, $16,334.74, and for

February, $15,300.13. Extending these over the year on the basis that the annual payroll will be approximately six times that of the first two months, the sum of $189,809.22 is obtained. This compares with the $210,000 included in respondent's reasonable expenses, as hereinafter found. It appears, therefore, that the effect on respondent's cost of the increases which have been made in compensation to its employees amply is cared for in the expenses hereinafter found to be reasonable.

6g. The yardage rates hereinafter prescribed applied to the volume hereinafter anticipated (Paragraph 201) results in an expected revenue from yardage of $425,900 (Paragraph 208). Applying these rates to the animals actually handled by respondent in the year 1933 produces yardage revenues of $399,509.16. The prescribed rates applied to the business actually done by respondent in January and February, 1933, produce yardage revenues of $59,926.07. For the same months of 1934, the prescribed rates would have produced $73,845.32. This increase of $13,919.25 in yardage revenues reflects an increase in volume of livestock handled.

6h. If rate determinations are to result from reasoned analysis of the evidence rather than more off-hand opinion considerable time must be consumed in their making. During that period some economic change is inevitable. Respondent has obtained one rehearing because the first hearing was followed by a general business depression which adversely affected respondent's gross revenues. It now seeks another because since the last hearing there has been a general improvement in those conditions. In determin- [fol. 39] ing the values used as the rate base, depression or stagnation values carefully have been avoided and normals used. The rates prescribed, which are now fair, will, as the economic improvement continues, become liberal. If rate regulation is to be effective, there must come at some time an end of hearings and a decision of the questions involved. This matter has been in hearing and litigation since the year 1929 and the time has now come for its decision. Accordingly, the petition for rehearing should be denied.

II

The Services Rendered by Respondent and the Rates Charged Therefor

7. There exists at St. Joseph, Missouri, a livestock market occasioned by the custom of producers and others who, having livestock to dispose of, ship it either by rail or truck to that place to be offered for sale to the various classes of buyers who congregate there. Such buyers consist chiefly of (1) local packers, whose plants are located at St. Joseph; (2) local butchers, who cater principally, if not exclusively, to the local demand for dressed meats and meat products; (3) order buyers, who purchase for packers located at points other than St. Joseph and for farmers and feeders of livestock; (4) dealers or traders, who purchase on their own account and usually for the purpose of resale without removing from the market and (5) the feeders and farmers, some of whom operate, either within or nearby the property of respondent, facilities known as feed lots, feed yards or feed barns and others of whom take the livestock to their farms for the feeding and finishing. The activities conducted by or through these various [fol. 40] classes of purchasers are, when considered collectively, usually denominated "the buying power of the market."

8. The producers and others shipping livestock to market for sale generally operate through agents known as "commission men." The sellers and their agents are usually spoken of collectively as "the selling side of the market."

9. Respondent, the St. Joseph Stock Yards Company, provides the physical facilities which constitute the market place, and renders certain services, hereinafter more fully described, in connection with the livestock (other than livestock fed in transit and direct shipments to packers and feeders) which comes there primarily to be marketed and only secondarily to be warehoused, fed, watered and otherwise attended to.

10. Respondent, in common with others interested in the market, has encouraged and promoted its development. Respondent's contribution has been chiefly in assisting in the strengthening of the buying power of the market

through aid in bringing in additional buyers. It also has expended considerable effort in inducing additional shipments to the market by those who have livestock to sell.

11. Respondent's specific functions are threefold: First, the provision of a market place; second, the provision of a depot for the unloading and loading of livestock brought to the market by railroads and by motor trucks or other vehicles; and third, the warehousing of the livestock so brought to market.

12. Incidental to its furnishing of a market place, respondent provides two office buildings within the stockyard area in which buildings the various classes of buyers and the representatives of the sellers can and largely do have offices for the transaction of their businesses. The [fol. 41] actual buying and selling of livestock is not, however, done in these buildings but in the yards among the pens where the animals are held. There are other tenants in these office buildings, such as insurance companies, the inspectors of brands of cattle, food concerns, a bank, and representatives of the United States Government. Respondent also has its offices in one of the buildings. The larger of these buildings is known as the Exchange Building and the smaller as the Annex.

13. Respondent's function as a livestock depot requires it to provide (1) docks for loading and unloading, which are long narrow platforms adjacent to and parallel with the tracks of the St. Joseph Belt Railway Company and raised to a height practically level with the floors of standard livestock cars; (2) chute pens, which are fenced enclosures into which the above described chutes lead and which are used to hold the livestock until it can be driven to the pens called "sales pens," where it is warehoused by respondent and exhibited for sale by the owner or his representatives; (3) chutes, which are inclined walkways for livestock leading down from the aforesaid chute pens; (4) an alley, which is a narrow, paved drive-way used in driving the livestock from the "chute pens" to the "sales pens"; and (5) a similar arrangement of docks at the level of truck floors as well as chutes, pens, and an alley for unloading livestock brought to the stockyards by truck and for loading animals dispatched therefrom by the same mode of conveyance.

14. That portion of respondent's property which is devoted to its function of warehousing livestock is reminiscent of a city for human habitation in that mostly it is divided into blocks surrounded by paved runways, called "alleys" and the blocks are divided into fenced and paved pens de- [fol. 42] signed to keep separate the livestock of different owners. Collectively the pens devoted to the warehousing of a single species of livestock are called a "division." There also are "divisions" within "divisions." For example, the "cattle division" is divided into the "commission division," wherein the livestock of the "original shippers" is warehoused, and the "traders division," wherein livestock which has been purchased by the traders or dealers and is being held for resale by them, is warehoused by respondent. Practically all of the hog and sheep divisions are under roof, while most of the cattle division is not. Again like a city there are certain conveniences, such as an elaborate system of sewers for draining the pens, a water system providing running water to a trough in each pen, a system of electric wiring and fixtures for lighting the pens, alleys, etc.; a feeding and bedding service, requiring storage barns for hay feed, and bedding, elevators for grain feeds, feed carts and horses or tractors, feed bins, feed racks or mangers, etc.; manure disposal, tractors and trailers and a small plot of ground without the stockyard as a place whereat to dump the manure in a public sewer; what may be termed as a "health service" employing an immunizing plant whereat hogs sold in the yard for shipment to the country for stocking or feeding purposes are immunized against certain diseases, dipping vats wherein cattle and sheep are immersed in solutions which rid them of certain skin diseases and parasites; and some other "services" of a minor nature.

15. In the foregoing description the facilities used by respondent in the performance of each of its several functions have been allocated in a general way to the respective function as to which they chiefly are employed. However, there is no clear, sharp line of demarcation. For instance, [fol. 43] certain portions of the Exchange Building and its Annex may be devoted from time to time to uses partaking more of the warehousing function than of providing a market place; the alley assigned to the livestock depot function is also used in connection with the warehousing function;

certain pens usually associated with warehousing are used at times in performing the livestock depot function and parts of the facilities devoted to the sewer, water, light, feeding and bedding, manure disposal and health "services" serve jointly in the performance of all three functions.

16. Respondent's stockyard is surrounded by the tracks of the St. Joseph Belt Railway Company, a corporation which, at the time of the first hearing, was a subsidiary of the respondent, but now independently owned. Over its tracks the livestock which comes to St. Joseph by way of the various trunk line railroads is brought to the unloading docks above described. There respondent, acting as servant of the trunk line or line haul carrier, unloads it over the unloading docks and into the chute pens. This service is performed under contract with the railroads and for it respondent receives from the respective railroads $1.25 per single deck and $1.50 per double deck car.

17. Respondent assumes responsibility for driving livestock from the chute pens to the sales pens of the respective consignees and placing it therein. This operation is frequently designated "yarding the livestock." However, there is an oral agreement between respondent and the "commission men," who are the usual consignees of the livestock, that the latter will "yard" all livestock consigned to them which arrives after the hour of seven a. m. The "commission men" make no charge to respondent for so [fol. 44] doing. The record indicates that the "commission men" do not always yard such livestock. The greater volume of the livestock arrives before the hour of seven a. m. Hence, respondent actually does the greater part of the "yarding" of livestock which arrives by rail. The greater part of that arriving as so-called "drive-ins" appears, however, to be yarded by the consignee. Tests made of a week in January in the years 1927, 1928 and 1929, respectively, show that in 1927, 77.64%, in 1928, 59.6% and in 1929, 61.3% of the livestock arriving by rail was yarded by respondent, while for 1928, 18.9% and for 1929, 29.5% of the driven-in livestock was so yarded. There is no showing as to the amount of driven-in livestock yarded by respondent in the year 1927. The record contains no data on this for years subsequent to 1929.

18. When the livestock is placed in the sales pens the consignee or his agent, the commission man, usually the latter, takes charge of it, orders feed for it, sorts it, shows it to prospective purchasers, sells it and drives it to the scales maintained by respondent, where it is weighed by respondent. By the custom of the market, title to the livestock passes to the purchaser when the animals are driven off the scales. The charges of the commission men for these and other services rendered their principals are, under the law, subject to regulation by the Secretary of Agriculture.

19. For the services rendered by respondent in warehousing the livestock from the time it leaves the railroad chute pens or is received at the drive-in division, until it is driven off the scales, including such driving as is done by respondent, the counting, checking and keeping record of the number and identity of the livestock in each consignment, the furnishing of water and the weighing, respondent charges [fol. 45] to the owner of the livestock who brought, or caused it to be brought to market, usually called the "original shipper," the following rates:

Cattle	35¢ per head
Calves (cattle weighing 400 lbs. or less)	25¢ per head
Hogs	12¢ per head
Sheep and goats	8¢ per head
Horses and mules	35¢ per head

In addition to the above yardage charges, which apply whether the livestock comes to the stockyard by rail, on foot or in vehicle, a charge, stated in respondent's schedule to be for the use of special facilities, is assessed against all livstock received in vehicles, such as automobile trucks and wagons, as follows:

Cattle	5¢ per head
Calves	2¢ per head
Hogs	2¢ per head
Sheep and goats	2¢ per head
Horses and mules	5¢ per head

The above stated charges, usually designated "yardage charges" are considered as covering the warehousing of the livestock throughout its stay in the stockyards regardless of the duration thereof or the number of changes of ownership which occur, the exception being that on livestock re-

sold in the commission division one-half of the above rates additional is charged.

20. Dealers or traders and others who have purchased livestock in the stockyard sometimes place it with a "commission man" to be resold. Such livestock is said to be "planted" and sometimes it is referred to as "seconds." When such livestock is resold, respondent charges to the vendor thereof the one-half rates mentioned in the preceding paragraph. No such charge is scheduled to cover resales made elsewhere than in the "commission division," but in practice respondent does not observe its published [fol. 46] tariff in this regard and imposes the one-half charges on resales wheresoever made if they do not involve livestock "to go to the country," that is, purchased by farmers to be fed.

21. When livestock comes to the market and, for any of a number of reasons, is forwarded to another market or driven to the country without being sold or weighed no yardage charge is imposed.

22. Some livestock comes to the stockyard consigned directly to packers and other users under circumstances such that it is not sold in the stockyard. The yardage charges detailed above are assessed against this livestock and imposed upon the person who causes it to come to the stockyard.

23. It is evident that the theory upon which the schedule of rates and charges is constructed is that whosoever causes livestock to come to the stockyard shall pay yardage charges, which are in effect an entrance fee, and that thereafter no further yardage charges should be imposed, except in case of livestock resold in the commission division. Inasmuch as the producer of livestock, either directly or through the country livestock buyer, causes the great bulk of the livestock to come to the stockyard, the burden of maintenance of the stockyard properties and services through the payment of yardage charges falls most heavily upon him.

24. When the livestock has been weighed and title has passed from the original shipper, as hereinbefore described, the nature of its further handling by respondent depends upon the class of purchaser who has acquired it.

25. If the purchaser be a local packer, the livestock is driven by respondent from the scales to a section of the cattle, hog or sheep division of the stockyard, as the case may be, known as the "packers' holding pens." There it is held in respondent's custody until such time as the [fol. 47] packer who purchased it takes delivery of it and drives it out of the stockyard. These "packer holding pens" are approximately similar in physical characteristics to those in the so-called "commission division" where the "original shipper's" livestock is yarded, and practically the same services are rendered by respondent in connection with the livestock in the one as in the other, except that that in the "packers' holding pens" is not usually fed or weighed. No charge is made to the packer for these services or the use of these facilities in connection with livestock which he has purchased in the stockyard.

26. If the purchaser be a dealer or trader, the livestock, in most instances, is driven by respondent to, and yarded in, pens allotted to the purchaser in those respective sections of the cattle, hog and sheep divisions which are known as the "traders' divisions." The physical characteristics of the "traders' divisions" are substantially the same as those of the "commission divisions" and the services rendered by respondent with respect to the livestock warehoused in each do not differ materially. The livestock is held in the "traders' divisions" until the trader sells or otherwise disposes of it. There respondent furnishes feed and water to it, making a charge for the former but not for the latter. There the trader shows it to prospective purchasers and usually sells it. Thence the trader drives it to the scales where it is weighed by respondent. For the use of these facilities and for these services respondent makes no charge to the trader on livestock sold "to go to the country" and only a half charge on that sold for other purposes. Of course, respondent makes for the feed fed to livestock in the traders' pens the same charge as for that fed elsewhere and contends that the "spread" in such charge is in part, at least, remuneration for the use of the pens.

[fol. 48] 27. If the purchaser be an "outside packer," as those packers who are not located at St. Joseph are designated, or a farmer or a feeder or a breeder of livestock, who is not located at or near the stockyard, the livestock is driven to the "shipping division" adjacent to the loading

docks and there held until all things are in readiness for its loading out. Such loading is done by respondent in performance of its livestock depot function and for it respondent receives $1.25 per single deck and $1.50 per double deck car from the line haul carrier involved. For the driving to the holding pens and the use of these facilities respondent neither makes any charge nor receives any compensation other than the original yardage charge paid by the "original shipper."

28. The foregoing applies to livestock purchased to be shipped out by rail. That to be trucked out, either to a purchaser outside of St. Joseph or to a packer or butcher located in that city but not immediately adjacent to the stockyard, is driven to the truck-in division for the species involved and there held for the truck driver employed by the purchaser who loads it onto a truck.

29. If the livestock be purchased by or for the operator of a feed lot or barn adjacent to the stockyard it is driven from the scales to the purchaser's feed lot or barn by the purchaser.

30. The service of driving livestock from the scales where it has been weighed to the point where it is to be loaded-out or delivered to the purchaser may be designated "re-yarding." Considering the operation as a whole, most of the re-yarding is done by respondent. Tests of a week in January in the years 1927 and 1928, show that in the former 89% and in the latter 92% of all re-yarding was done by respondent.

[fol. 49] 31. Hereinafter there is found a total area of 4,409,411 square feet as the used and useful land of respondent. On this area are situated all of respondent's structures which are found to be used and useful. These structures have been divided according to the primary use to which they are put under the designations "Initial Yarding Facilities," "Re-yarding Facilities" and "Packers' Storage Facilities." The initial yarding facilities are facilities used in handling livestock prior to the times it is sold and passed from the original shipper to the purchaser. The following table shows in detail the areas used for different purposes in connection with the initial yarding facilities:

Section	Pens		Alleys	Scales	Dock and Inclines	Truck Approach	Gutters	Total Area
	No.	Area	Area	Area	Area	Area	Area	
Carlot Cattle Div.:								
Commission	470	368,503	66,212	18,852	.....	.....	.....	453,567
T. B. Free	1	2,079	.....	.....	.....	.....	.....	2,079
T. B. Quar	4	2,688	.....	.....	.....	.....	.....	2,688
Scabies Quar	2	609	.....	.....	.....	.....	.....	609
General	.....	.....	140,862	.....	.....	.....	.....	140,862
Truck Cattle Div.:								
Commission	41	7,412	2,832	480	.....	.....	.....	10,724
Unloading	11	1,900	.....	.....	1,272	5,584	.....	8,756
Carlot Hog Div.:								
Commission	364	152,136	70,069	19,754	.....	.....	9,011	250,970
Cripple	.....	.....	.....	618	.....	.....	.....	618
General	.....	.....	22,725	.....	.....	.....	.....	22,725
Drive-In Hog Div.:								
Commission	203	18,942	14,160	1,956	.....	.....	.....	35,058
General	.....	.....	4,267	.....	.....	.....	.....	4,267
Unloading	19	3,070	.....	.....	2,260	10,794	.....	16,124
Carlot Sheep Div.:								
Commission	60	45,750	13,548	9,244	.....	.....	.....	68,542
General	.....	.....	13,128	.....	.....	.....	.....	13,128
Drive-In Sheep Div.:								
Commission	99	10,483	4,320	2,416	.....	.....	.....	17,219
General	.....	.....	1,144	.....	.....	.....	.....	1,144
Unloading	9	1,152	128	.....	768	39,120	.....	41,168
	1,283	614,724	353,395	53,320	4,300	55,498	9,011	1,090,248

[fol. 50] The re-yarding facilities are used in connection with the handling of livestock after it has been sold by the original owner and title has passed to the first purchaser. These facilities include the area used by traders who operate in the yard, the area used by order buyers and the area used for livestock purchased by packers or other buyers while it is being held tentatively and before final delivery is made by the respondent company. The following table shows in detail the area used for different purposes in connection with the re-yarding of livestock:

Section	Pens		Alleys	Scales	Dock and Inclines	Gutters	Total Area
	No.	Area	Area	Area	Area	Area	
Carlot Cattle Div.:							
Traders	128	157,076	23,564	4,340	.....	.....	184,980
Order Buyers	3	4,096	.....	.....	.....	.....	4,096
Purchasers, Temporary, Holding	552	125,794	52,068	.....	.....	.....	177,862
Truck Cattle Div.:							
Purchasers, Temporary, Holding	7	3,456	1,440	.....	.....	.....	4,896
Loading	8	864	.....	.....	396	.....	1,260
Carlot Hog Div.:							
Traders	8	4,920	910	.....	.....	488	6,318
Order Buyers	14	8,649	5,863	.....	.....	350	14,862
Purchasers, Temporary, Holding	90	103,050	10,824	.....	.....	4,788	118,662
Drive-In Hog Div.:							
Purchasers, Temporary, Holding	21	15,187	2,850	.....	.....	.....	18,037
Carlot Sheep Div.:							
Purchasers, Temporary, Holding	35	26,696	11,808	.....	.....	.....	38,504
Drive-In Sheep Div.:							
Purchasers, Temporary, Holding	29	6,055	1,544	.....	.....	.....	7 599
	895	455,843	110,871	4,340	396	5,626	577,076

[fol. 51] The packers storage facilities are facilities used by Swift and Company and Armour and Company for holding livestock which they have purchased and on which they have taken delivery. This livestock is held in these pens until the packers remove it to the packing plant for slaughter. The area of the facilities allocated to each of these packers is as follows:

Section	Pens		Alleys	Total
	No.	Area	Area	Area
Swift & Co. (Tract C)	37	42,666	14,828	57,494
Armour & Co. (Tract A)	10	16,384	1,792	18,176
	47	59,050	16,620	75,670

In general it may be stated that approximately 62% of the area on which respondent's facilities are located is devoted to the initial yarding facilities, 33% to re-yarding facilities and a little over 4% to the packers' storage facilities. Of the re-yarding facilities 33% is occupied by traders and 3% by order buyers and the remainder consists of temporary holding pens for purchaser's livestock. For the use of these facilities the traders, order buyers and other purchasers do not pay any yarding charge. In stating that these three classes of facilities are used for specified services it is meant that these facilities customarily are so used. It should not be understood that any portion of the property is never used for any other purpose, for nothing in the stockyard is as static as that. The primary object is to take care of all the livestock which comes to the stockyard and in case of an extraordinarily large volume of livestock being received, or other emergency, the usual customs and routines give way to the accomplishment of the primary purpose.

34. Incidental to its functions of providing a livestock depot and a livestock warehouse, respondent supplies feed [fol. 52] and bedding to the livestock in its custody, whenever such feed or bedding is ordered by the owner of the livestock or his agent. The feeds fed are principally (1) hay, both prairie and alfalfa; (2) corn and (3) oats. Straw is used for bedding. Feed and bedding are supplied to livestock both in the pens of the stockyards and in the railroad cars. The charges vary from time to time in accordance with fluctuations in the market prices. At the date of the

hearing the charges for feed and bedding supplied to pens were:

Hay, prairie	$1.10	per cwt.
Hay, alfalfa	1.50	" "
Corn	.75	per bushel measure.
Oats	.90	per bushel measure.
Bedding (straw or hay)	.60	per bale.

When feed and water are supplied to livestock in cars a charge of $1.00 per deck is made in addition to the above feed charges. In some instances hay is purchased in ton lots, delivered to the pens by respondent but fed by the purchaser. In such cases a reduction of $2.00 per ton is made.

35. The difference between (1) the market price of feed or bedding delivered at the stockyards, and (2) the price paid for it by the owner of the livestock is spoken of as the "spread." For the years 1927 to 1932, inclusive, the average spread on hay and corn, which constitute the principal feeds sold by the respondent, was:

	Hay (per cwt.)	Corn (per bu. measure)
1927	$.65	$.59
1928	.71	.62
1929	.71	.69
1930	.71	.72
1931	.67	.74
1932	.67	.55

[fol. 53] 36. These "spreads" represent gross and not net profits. Handling costs, overheads, and other indirect costs have not been deducted from gross profits. If such costs were deducted there would remain net profits in excess of what properly might be called the merchandising profits. There is no feeding done in the stockyard without charge. Therefore, the effect of these "spreads," in addition to providing a merchandising profit, is (1) to mitigate in part such inequality as may result from the failure to apply yardage charges to all persons who receive warehousing services, and (2) to some extent to give effect in charges to the element of time in the stay of the animal in the stockyard. Under the system of yardage charges now in vogue, there is paid on a consignment of livestock which is sold and

removed from the stockyard within a few hours after its arrival, the same charges as on a consignment which is warehoused for several days. Obviously the cost of the latter service is greater than that of the former but probably it would be impracticable to attempt to graduate the yardage charge according to the length of time the animal is warehoused. Until some simple plan, not yet suggested, is discovered, so to do would introduce an intricacy and confusion in collecting such graduated yardage charge which would be defeative of the object sought.

37. The extent to which the time element in the warehousing of livestock is reflected in the increased income from feed is illustrated by the following facts: In the year 1932 there were handled in the commission division 421,271 head of cattle and calves. During the same year dealers purchased 89,476 head of cattle and calves, or the equivalent of approximately 21% of the number handled by commission merchants. The principal feed fed to cattle and calves is hay. During the year 1932 a total of 5,524,088 pounds of hay was sold to commission men and during the same period [fol. 54] a total of 2,250,298 pounds of hay was sold to dealers. Of the total hay sold to commission men and dealers by the respondent, 57% was purchased by commission men and 41% by dealers, although the number of head of cattle and calves handled by dealers was only 21% of the number handled by commission men. This indicates that on an average the cattle and calves warehoused by respondent for dealers were held at least twice as long as were the cattle and calves handled for the original shipper. It also indicates that any reduction in the "spread" on the price of feed or bedding will be to the advantage of that class of patrons whose livestock remains longest in the yards, unless there be a compensating adjustment in the rate structure.

38. The respondent does not set forth in its schedule of rates and charges, filed pursuant to the requirements of the Packers and Stockyards Act, 1921, the charges it makes for (1) the unloading and loading of livestock for the railroads, and (2) for the use of space by tenants in the Exchange Building and certain garages and the rental on the Transit House hotel. The amounts received from the fol-

lowing sources are set forth in the record and are as follows for each of the years from 1927 to 1932, inclusive:

	Unloading & loading	Rentals Exchange Building	Rentals garages
1927	$50,031.00	$41,474.57	$3,147.00
1928	52,011.00	41,606.36	3,167.00
1929	46,179.00	41,078.05	3,160.00
1930	38,091.00	39,677.04	3,167.00
1931	28,422.00	39,641.05	3,262.00
1932	19,592.00	38,714.50	2,705.52

39. Respondent sets forth in its schedule of rates and charges the charges it makes for certain specific services [fol. 55] rendered by it. Among these services are the vaccinating of hogs, the cleaning and disinfecting of pens and cars, and dipping and spraying. The charge for the use of facilities for vaccinating hogs is ten cents per head. The respondent "accepts no responsibility for damage or loss of animals in process of vaccination. Owners make their own arrangements for serum and veterinary service." Cleaning and disinfecting charges apply "whenever it is necessary to clean or disinfect any portion of the respondent's pens by reason of the movement in or through the yard of livestock infected with contagious disease." The charges for cleaning and disinfecting are as follows:

Single pens	$2.50
Double pens	4.00
Chutes	2.50
Alleys (same rates as pens)	.37 per 100 Sq. feet
Wagons and small trucks	.75 each
Trucks of two tons capacity or over	1.00 each

The income derived from cleaning trucks of manure and debris is in addition to that derived from the charges enumerated above. Respondent furnishes the facilities, the dip and labor used in dipping livestock, and makes the following charges for the services rendered:

Cattle	.35 per head, minimum $35.00
Calves	.15 per head, minimum $35.00
Hogs	.05 per head
Sheep	.05 per head, minimum $ 8.00
Goats	.05 per head, minimum $ 8.00

Under circumstances set forth in the schedule, the minimum per owner may be less than indicated above. The revenues derived from these special services for each of the six years from 1927 to 1932, inclusive, are as follows:

[fol. 56]

	Vaccinating & spraying hogs	Cleaning & disinfecting	Dipping
1927	$3,291.85	$353.90	$339.07
1928	4,238.40	298.20	171.71
1929	2,735.15	234.88	3,046.89
1930	1,871.45	184.17	.....
1931	3,666.56	144.58	14.10
1932	1,649.50	82.65	.....

In addition to the revenues received from yardage and the sale of feed, and those miscellaneous activities enumerated above, the respondent receives revenues from other miscellaneous activities which do not grow out of "rates and charges" or for which no rates or charges are listed in respondent's tariff. The sum of all of these represents the funds available for the paying of all operating expenses, provision for appropriate reserves, and a return upon the value of the property devoted to public use.

40. A test of the reasonableness of the rates now being charged by respondent is whether the revenue produced by them is substantially in excess of the amount necessary to pay the reasonable cost of rendering the services for which those rates are charged, including in such costs a fair return upon the fair value of respondent's property used and useful in the rendition of such services. A test of the reasonableness of rates to be prescribed, if those now being charged by respondent be found to be unreasonable, is whether the revenue reasonably to be anticipated from them are sufficient to pay the aforesaid reasonable costs of rendering the services. To the end that these facts may be determined, it is necessary to ascertain from the evidence (1) the property used and useful in the rendition of the services; (2) the fair value of that property; (3) the [fol. 57] fair return on that fair value; (4) respondent's reasonable operating expenses; and (5) the volume of busi-

ness reasonably to be anticipated for respondent in the immediate future.

Used and Useful Character of Respondent's Property

41. At the time of the first hearing respondent's land consisted of 372.414 acres or 16,222,354 square feet and 77.46 acres or 3,374,158 square feet leased to the Belt Railway, making the total area of the land owned 449.874 acres or 19,596,512 square feet. Between the date of the first hearing and 1932 all the land was resurveyed and certain sales and purchases took place. These changes resulted in additions to and deductions from the amount of land owned in 1929. The gross additions were 8.770 acres or 382,059 square feet, and the deductions were 87.142 acres or 3,795,927 square feet. As a result of these changes the amount of land owned by the respondent at the time of the second hearing was 371.502 acres or 16,182,641 square feet.

42. Two witnesses were called by the respondent and one by the Government, who testified with respect to the used and useful character of respondent's property. As a basis for respondent's testimony, Respondent's Exhibit 135 was prepared. It sets out the various tracts of land by zones, uses to which the various areas are put, the area claimed to be used and useful in connection with the rendition of stockyard services and the area which respondent admits is not used and useful. As a basis for the Government's testimony, Government Exhibits 107 and 107-A were prepared. Government Exhibit 107 is a map on which are delineated various tracts designated "items," which the witness appearing for the Government testified were not in his opinion used and useful. Government Exhibit 107-A [fol. 58] is a description of these various tracts, giving the area in square feet and the zone in which they are located.

A summary of the lands which respondent claims are used and useful is as follows:

Zone	Area	
	Acres	Square feet
A	71.726	3,124,389
B	17.816	776,060
C	24.655	1,073,972
D	11.436	498,152

Zone	Area	
	Acres	Square feet
E	10.283	447,927
F	45.951	2,001,626
L (Road and Refuse Dump)	1.478	64,360
N (Road and Manure Disposal Area)	1.186	51,675
1	.544	23,697
2	3.190	138,956
3	1.291	56,250
Total	189.556	8,257,064

A summary of the lands which respondent concedes are not used and useful is as follows:

Zone	Area	
	Acres	Square feet
F-1	.874	38,071
I	9.400	409,464
H	10.313	449,234
G	22.752	991,077
J	24.873	1,083,468
K	16.083	700,577
L (Except road to refuse dump and the dump)	16.838	733,483
M	12.516	545,197
N (Except road and manure disposal area)	55.226	2,405,647
3	13.071	569,359
Total	181.946	7,925,577

[fol. 59]

Zone A

43. Zone A contains 71.726 acres or 3,124,389 square feet. Within this zone are located the unloading and loading facilities, the cattle, hog and sheep divisions of respondent's stockyard, the Exchange Building and Annex, runways and viaducts for livestock, barns and elevators for feed, feedlots, and substantially all of the other facilities ordinarily used in the handling of livestock by the respondent in the conduct of its business of operating a stockyard.

Unloading and Loading Facilities

44. Items 1, 12 and 14 consist of the loading and unloading facilities, including the docks, chute pens, inclines and

chute alley. These facilities are used in connection with unloading and loading livestock received at or shipped from respondent's stockyard by rail. A witness called by the Government testified that these facilities and the land occupied by them are not used and useful because he considers the services of unloading and loading a part of the transportation service and not a stockyard service within the meaning of that term as used in the Packers and Stockyards Act, 1921. Witnesses called by the respondent testified that in their opinion the unloading and loading of livestock is a stockyard service. They testified further that all livestock handled by rail is unloaded or loaded by respondent company and that it is paid by the line haul carriers for furnishing the service a fee of $1.25 per single deck and $1.50 per double deck car. These witnesses testified that from the time the livestock is unloaded out of the car on to the unloading dock it is in the custody of the respondent and that the respondent assumes all responsibility for it. [fol. 66] The witness for the Government did not controvert this latter position but contended that the respondent accepts livestock as agent for the carrier and that in its capacity as a stockyard operator respondent does not receive the livestock until counted out of the chute pens. Whether the unloading or loading of livestock is a transportation service need not be passed upon in this order. It is a fact, nevertheless, that the respondent performs the actual function of unloading and loading livestock arriving by or shipped out by rail, which service it renders in the capacity of an independent contractor and for which it receives the fees heretofore mentioned. Whether the unloading and loading of livestock from and into railroad cars be regarded as a transportation or a stockyard service or both, it is a service rendered for the original shipper for which he pays in the line haul rate the charges shown above. In the performance of this service the stockyard company uses indiscriminately, and without segregation of hours, labor also otherwise employed about the stockyard. Determination of the cost of rendering this service as segregated from that of respondent's other activities would result merely in removing a part of the charge to the shipper from the category of yardage and placing it in that of transportation or vice versa. For this reason the properties used, the expenses incurred, and the revenues received in the

rendition of these two services are considered as a whole. The value of the loading and unloading facilities is included as a part of the common rate base.

Packers Storage Facilities

45. Items 2 and 11 consist of pens and alleys designated by the witness Christensen as "packers' storage facilities," in which livestock purchased by Armour and Company and [fol. 61] Swift and Company are yarded after these packers have taken delivery of it at other pens designated by the same witness as "packers' holding pens." Christensen testified that in his opinion the furnishing of these facilities to the packers does not constitute a stockyard service, his reason being that respondent delivers custody of the livestock to the purchaser at the holding pens and exercises no further control over it. Certain of respondent's officers testified that in the ordinary course of the operation of the stockyard the furnishing of these facilities to the packers is a stockyard service; that, if these pens were not furnished respondent would be under the necessity of holding the livestock in the pens to which it was yarded immediately after passing over the scales; that, if this were done, more pen and other space would be required; that, if these facilities were not furnished, the packers might very well delay purchasing until the livestock was needed at their plants, which would result in the slowing up of the market and a possible reduction in the price received by the sellers. It is not necessary to pass here upon the question of whether the holding of livestock for packers is a stockyard service for which separate charges should be collected. This land is so intermingled with that devoted to general stockyards use that even if it were vacant its value would be included in the general rate base. This area is found to be used and useful in the rendition of the services for which are charged the rates the reasonableness of which is herein being determined.

Covered Stock Driveway

46. Item 3 consists of the covered stock driveway leading from the storage pens used by Armour and Company and also from the west end of the hog alley located at the south [fol. 62] line of the hog division, to the property line of

Armour and Company's plant. This driveway is used for moving livestock purchased by Armour and Company from respondent's stockyard to Armour and Company's plant. The right of the purchaser of livestock to have a reasonable time within which to remove his purchases from the stockyard necessarily carries the right to a reasonable means for so removing them. To require that they be taken by the shortest route to public or private roadways and there co-mingled with the vehicular traffic thereon would be unreasonable. Therefore, respondent has provided to the outer boundary of the tract of land on which the stockyard is located the covered stock driveway here in discussion. This driveway is part of a stock driveway which originally began at the south line of Illinois Avenue and continued south adjoining the east line of Packers Avenue until the end of that Avenue is reached. At this point it turned west and continued to the east line of Armour and Company's property. The driveway is now thus located except that near the south line of Illinois Avenue a portion of it has been converted into an incline approach to the new stock viaduct which is dealt with hereinafter. Witness Christensen segregated as Item 3 that portion of this driveway which lies south of the alley extending from the south side of respondent's hog division. His opinion that Item 3 is not used and useful appears to be based on the thought that respondent has done all that is necessary when it has provided a way for the delivery of livestock purchased by Armour and Company at that portion of its general stockyard area nearest that packer's operating plant and that such packer should there assume the burden of providing a way for the animals to be driven to the point in its plant where they are desired. So to do, however, would necessitate either turning the animals into Packers Avenue, con- [fol. 63] structing a viaduct across it, or a driveway around it located as is the one under discussion. The management has seen fit to adopt the course last mentioned. Its action in so doing cannot be said to be sufficiently unreasonable to warrant the interference of the regulatory authority. The land and other property constituting such driveway is found to be used and useful in the rendition of the services for which are charged the rates the reasonableness of which is herein determined.

New Stock Viaduct

47. Items 4 and 15 consist of what is described as the new stock viaduct. This viaduct crosses Illinois Avenue connecting the cattle and sheep divisions with the stock driveway on the south side of Illinois Avenue and an L from this viaduct crosses Packers Avenue and leads to the property of Swift and Company. With the exception of a small part of the approach which is on Swift and Company's land, this viaduct is all located on the land of the respondent. The viaduct is used for moving cattle and sheep purchased by Armour and Company from the cattle and sheep divisions across Illinois Avenue, and hogs purchased by Swift and Company from the hog division on respondent's property to the plant of Swift and Company. This viaduct was constructed after the date of the first hearing in this case, and Swift and Company, Armour and Company, and respondent each paid one-third of the cost of its construction. Prior to the construction of this viaduct livestock was moved over this land at grade level. It was necessary to throw gates across Illinois Avenue and Packers Avenue. This created congestion as the result of stopping truck and other traffic moving in and out of the [fol. 64] respondent's yard and also along Packers Avenue. The only question raised by the evidence as to the used and useful character of this facility is whether, in view of the fact that respondent bore only one-third of its cost, the viaduct should go into the rate base at its entire present value or at one-third thereof. Inasmuch as title to the entire facility rests in respondent and the rate base is being found on the basis of cost of reproduction new less depreciation there can be no warrant for excluding two-thirds of the value of this facility unless upon the ground that the packers' contribution is the best measure of their interest in and benefit from the facility and that such interest and benefit, or as it is sometimes expressed "joint-use," renders the facility only proportionately used and useful in connection with respondent's rate base. That portion of this viaduct which passes over Illinois Avenue together with the inclines necessary to reach that portion cannot be distinguished as to used and useful character, from those portions of the stock driveway which lie immediately north and south of the inclines. Their used and useful character

is not questioned. Therefore, the portions of the stock viaduct last mentioned are found to be properly includable in the respondent's rate base at their full present value based upon the cost of reproduction new less depreciation. As to the L which extends across Packers Avenue to the line of Swift and Company's property its inclusion in the rate base at full value is supported by the same reasoning which led to the inclusion therein of the covered stock drive. Consequently this entire facility, including respondent's land upon which the structure rests, is found to be used and useful in the rendition of the services for which are charged the rates the reasonableness of which is determined in this order.

[fol. 65] Packers Avenue

48. Items 5 and 16 consist of Packers Avenue extending from the Belt Railway tracks at the northerly boundary of the main stockyard area to the point at which the Armour covered stock drive crosses respondent's property leading to Armour and Company's property line. The portion of Packers Avenue lying north of the south line of Illinois Avenue and extending to Lake Road is used by all classes of traffic coming from the north to respondent's property, and the evidence adduced indicates that substantially one-half of the truck traffic coming to the stockyard passes over Packers Avenue. The part of Packers Avenue extending south of the south line of Illinois Avenue is used to only a limited extent in connection with respondent's business. Witnesses for the respondent testified that it was necessary to have access to the west side of respondent's property along Packers Avenue south of Illinois Avenue so that fire trucks could get in and also so there would be access at this point of respondent's property for cleaning and other equipment. The portion of Packers Avenue north of the south line of Illinois Avenue is used by traffic coming to the St. Joseph Warehouse and Cold Storage Company, Swift and Company, and Armour and Company, and the portion of Packers Avenue south of the south line of Illinois Avenue is used by all traffic moving to and from the packing plant of Armour and Company. The main trunk sewer used for draining respondent's property and also used by the two packers is located within the boundary lines of Packers Avenue and extends its entire length. This sewer

is used principally for draining the stockyard area although it is connected with Armour and Company's plant and furnishes Armour and Company an outlet for its sewage. Packers Avenue is a private roadway necessary to [fol. 66] the respondent in the conduct of its stockyard operations. Such use as it grants to others is terminable at the will of the respondent. Its area is found to be used and useful in the rendition of the services for which are charged the rates the reasonableness of which is determined in this order.

Anchor Serum Company Land

49. Part of Item 7 consists of property occupied by the Anchor Serum Company. This company is an independent operator which manufactures hog cholera serum and numerous other biologic products. A witness called by the respondent testified at length, contending that property occupied by this company should be considered used and useful, and as the basis for his testimony prepared Respondent's Exhibit 139 in which he outlined the rental received for the land together with various other items of income which he attributed to the presence of the Anchor Serum Company at the market. A witness called by the Government testified that in his opinion the Anchor Serum Company conducted a business which was not in any way connected with stockyard services and for that reason the property occupied by it should be excluded. An analysis of the evidence with respect to this firm shows that it is an independent operator which leases the property and exercises control over it. While it is a factor on the market, because it purchases a certain number of hogs on the open market and thus adds to the buying demand, this fact does not lead to the conclusion that the property occupied by it is used in connection with stockyard services. There is a disagreement between the witness Christensen and the witness called by the respondent as to the area in Zone A occupied by the Anchor Serum Company. It is found that the area occupied by this company, as determined by the witness for [fol. 67] the respondent, is 44,535 square feet. It is found that this area and the structures located thereon are not used and useful in the rendition of the services for which are charged the rates the reasonableness of which is determined in this order.

Land South of the Drive-in Hog Division

50. Item 8 consists of a tract of land lying south of the drive-in hog division and having an area of 103,723 square feet. It lies within the general stockyard area and is found to be used and useful in the rendition of the services the reasonableness of the rates for which are determined herein.

Land West of Packers Avenue

51. Item 10 consists of a tract of land extending west from the west line of Packers Avenue immediately west of the termination of Illinois Avenue a distance of approximately 500 feet. The witness for the Government testified that this tract of land is used for the purpose of parking automobiles by employees of the adjacent packing plants and that it is entirely without the stockyard area. He stated that, in his opinion, it is not used and useful for stockyard purposes. The witness for the respondent testified that this area is necessary for the parking of trucks and automobiles belonging to patrons of the respondent; that the respondent company does not police this area but that many patrons of the market park their automobiles and trucks in this area. If the evidence showed that respondent had found it necessary to set aside this area and the space for the parking of trucks and other vehicles driven to the locality by those who have business with the respondent its claim for the inclusion of the land in the rate base would be [fol. 68] more convincing. On the contrary it appears quite clearly that respondent treats the land as vacant, leaving it to be used by any who see fit to park their vehicles upon it. There is nothing to indicate that it cannot be monopolized by employees of the packing plants, leaving respondent's patrons no opportunity to use it. It is found, therefore, that this tract is not used and useful in connection with the rendition of stockyard services.

Land on Which Offices of Sheep Commission Men Are Located

52. Item 13 consists of two small offices occupied by two commission firms in the sheep division. It is found that the land on which these are located and also the structures are used and useful in connection with the rendition of stockyard services.

Land on Which Exchange Buildings Are Located

53. Item 17 consists of the area on which is located the Exchange Building and the Exchange Building Annex and the vacant ground adjoining these buildings. The witness for the Government testified that in addition to the space used by the respondent the buildings were occupied by various classes of tenants, including commission firms, traders, packers, a bank, post-office, other Government offices, and tenants conducting miscellaneous types of business. He stated that in his opinion the furnishing of these offices to tenants is not a stockyard service and that a division of this property should be made on some equitable basis eliminating that part not actually used by the respondent. A witness appearing for the respondent testified that the operation of these buildings and the leasing of space to these various classes of tenants is a necessary incident to the [fol. 69] operation of a public market; that it is necessary that office space be provided for tenants of this character at a stockyard in order that the market be conducted efficiently and that the operation of buildings similar to those operated by the respondent is a common practice at all of the principal markets. It is the opinion of respondent's witness that the operation of the Exchange Building and Annex constitutes stockyard service and that, therefore, the buildings and the ground occupied by them should be considered as used and useful. An analysis of the entire evidence with respect to the Exchange Building and the Annex leads to the conclusion that the operation of these buildings is a necessary incident to the operation of respondent's stockyard. It is found that these buildings and the land occupied by them, and the vacant land immediately surrounding them, are used and useful in connection with the rendition of stockyard services.

Land on Which Garages Are Located

54. Items 18, 19 and 20 (Gov. Ex. 107 and 107-A) consist of three sets of garages, one located adjoining the Exchange Building grounds, one near the sheep drive-in division, and one on the right-of-way of the Belt Railway. These garages are used for the storage of automobiles owned principally by tenants of the Exchange Building and Annex and by various persons having business in the sheep division. The location of the two sets of garages in Zone A

is such that if no garages were on the land, it, nevertheless, would be included as used and useful land for the reason that it is so interspersed with land occupied by respondent's operating facilities as to be impractical of segregation. In such circumstances the fact that the land is put to a use not necessary to the rendition of the services for which the [fol. 70] rates under determination are charged should not be held to render it not used and useful. It is found, therefore, that the land owned by respondent on which garages are located and the garages thereon are used and useful.

Land Used as Entrance to Subway

55. Item 21 (Gov. Ex. 107 and 107-A) consists of the land occupied by the west entrance to the subway which extends from the Exchange Building grounds on the west and beneath the tracks of the Belt Railway and the Burlington, Rock Island, and Santa Fe railroads and has its entrance east of the Santa Fe tracks. This subway which was constructed a number of years ago at a time when respondent company owned the Belt Railway was paid for in part by respondent. Since the date of the first hearing in this cause respondent has disposed of all its interest in the Belt Railway. The purpose of this subway is to enable all persons coming to respondent's property by foot to reach that property without the necessity of passing over the various railroad tracks at grade. The evidence indicates that very little use is actually made of the subway. It is found that the area owned by respondent which covers the west subway entrance is used and useful in connection with the rendition of stockyard services. It is further found that no part of the value of this subway except that of the structures on respondent's land should be included in the rate base.

Old Southern Cattle Division

56. Item 22 (Gov. Ex. 107 and 107-A) consists of the property used for loading and unloading Southern cattle at the time when such cattle were moved in interstate commerce. Movement of such cattle has now been discontinued and the property included under Item 22 is now used by the [fol. 71] respondent as a dock in connection with the disposal of such manure as is shipped from respondent's stockyard by rail. The evidence raises some question as to

whether the entire area occupied by the dock is necessary for this purpose. However, it is not clearly shown that respondent does not need all of this dock for the shipment of manure. In the absence of such a clear showing the fact of actual use must control and the entire area is found to be used and useful.

Vacant Land Near Nichols and Davis Feedlot

57. Item 23 (Gov. Ex. 107 and 107-A) consists of a vacant space in the northern portion of respondent's Zone A, lying between the so-called Nichols and Davis feedlots and was formerly a part of the Southern cattle division. The witness called by the Government testified that in his opinion this property is not used and useful for the reason that it is now vacant and unused. It is found that the land covered by this item is used and useful for the reason that it is a small integral part of respondent's general stockyard area.

Land Occupied by Feedlots

58. Item 24 (Gov. Ex. 107 and 107-A) consists of various tracts of land which are used in connection with the operation of various feedlots. These feedlots are allocated to different persons who use them for the holding, handling and feeding of cattle, hogs and sheep. Such allocations do not confer upon the persons who receive them the right to hold the feedlots for any particular period. Respondent may repossess the feedlots at any time, but, in practice, the allocations have, since the year 1929, remained fairly static. The operators of these feedlots purchase this livestock [fol. 72] either at respondent's stockyard or away from the market and move it to the feedlots where it is fed varying lengths of time and then sold, largely to packers. The evidence shows that the larger part of the business conducted by these feedlot operators consists of the feeding of lambs and that these lambs are fed a comparatively short length of time, usually 30 or 40 days. They are then sold in the feedlots to packer buyers and moved through respondent's stockyards over the scales to the plants of the packers. For this respondent receives its regular yardage charges in addition to the feedlot yardage charges. The witness appearing for the Government was of the opinion that these feedlots are not used and useful for the reason that the feeding of livestock in them is comparable to the ordinary

feeding of livestock in farm feedlots; that this feeding of livestock is not a part of the ordinary marketing process and that, therefore, furnishing of these feedlots is not a stockyard service within the meaning of that term as defined in the Act. Witnesses appearing for the respondent, on the other hand, vigorously contended that the furnishing of these feedlots is a stockyard service. They stated that particularly with respect to lambs the feeding period is for a comparatively short length of time and not comparable to the feeding of lambs in the ordinary farm feedlot. They further contended that, by virtue of the buying demand resulting from the purchases made by the operators of these feedlots respondent's market is strengthened and that inasmuch as the second yardage is paid on all livestock in these feedlots their operation results in a benefit to respondent's business as a whole. They further stated that the charges made for the use of these feedlots is on a per head basis and is covered in an item in respondent's tariff in a manner similar to other charges made by respondent. Among the rates the reasonableness of which is the sub-[fol. 73] ject of this inquiry are the rates charged for the service rendered by respondent in the use of these feedlots. While, therefore, the property devoted to that service is not properly a part of the rate base for determining the reasonableness of the rates charged the original shippers it is properly a part of the common rate base for the determination of the reasonableness of all the rates here under investigation and therefore it is found to be used and useful.

Vacant Land Near Feedlots

59. Item 25 (Gov. Ex. 107 and 107-A) is a narrow strip of land lying west of the feedlots and between the feedlot properties located in the northerly part of Zone A. It originally was a part of the old quarantine dead line. The witness appearing for the Government testified that this land is not now being used and for that reason in his opinion it is not used and useful. It is found that this tract is used and useful for the reason that the land is a small integral part of respondent's general stockyard area.

Vacant Land East of Packers Avenue

60. Item 26 (Gov. Ex. 107 and 107-A) consists of a narrow strip of vacant and unused land lying east of Packers Avenue and west of the pen area. Inasmuch as it is within

the confines of the general stockyard area it is found to be used and useful for the same reasons as outlined.

Vacant Land West of Packers Avenue

61. Item 27 (Gov. Ex. 107 and 107-A) consists of a long narrow strip of land having an area of 50,268 square feet and lying immediately west of the west line of Packers Ave- [fol. 74] nue between the plant of Armour and Company and what is spoken of in the record as the plant of Morris and Company, which now belongs to Armour and Company. The witness for the Government testified that this was formerly considered to be a part of the Belt Railway right-of-way but was not included in the Belt Railway sale; that it serves as a main entrance to Armour and Company's plant and is not used by the respondent in the conduct of its yard. He stated that in his opinion it is not used and useful. The witness for the respondent testified that he had negotiations under way for the exchange of this land for a tract of land immediately contiguous to Item 10, which would result in enlarging Item 10 so that it would be more suitable for parking purposes. He further stated that respondent is not using this tract at the present time. It is found that this tract of land is not used and useful in connection with the rendition of stockyard services.

62. A summary of the land found to be used and useful in Zone A is as follows:

Total Area		3,124,389
Excluded as Not Used and Useful:		
Item 7	44,535	
" 10	25,613	
" 27	50,268	
Total Area Excluded		120,416
Total Area Used and Useful		3,003,973

Zone B

63. Zone B has an area of 776,060 square feet lying south of Illinois Avenue. On it are located a part of the Anchor Serum Company's plant, drainage ditch, some feed lots and a small part of the water tank area.

64. Item 6 and a part of Item 7 (Gov. Ex. 107 and 107-A) [fol. 75] consist of land occupied by the O'Connell feedlot and the structures located thereon. The use of this prop-

erty is similar in character to the use of the property described under paragraph 58. Accordingly, it is found that this property is used and useful.

65. A part of Item 7 (Gov. Ex. 107 and 107-A) is used as a site for the Anchor Serum Company. The use to which this part of Item 7 is put is similar to that discussed under paragraph 49 and the area of the land described under Item 7 in Zone B is accordingly found to be not used and useful. There is disagreement between the witness for the Government and the witness for the respondent as to the area in this zone occupied by the Anchor Serum Company. The area of 304,914 square feet, as testified to by respondent's witness, is accepted.

66. Item 9 (Gov. Ex. 107 and 107-A) consists of 67,400 square feet of land located south of the main hog division. The witness for the Government testified that this land was vacant and unused and not available for any particular use. The witness for the respondent testified that this tract should be considered used and useful for the reason that on it is located an open ditch extending the entire length which drains the south portion of the truck hog dock, a portion of the grain elevator area, and all of the water tank area, and also a part of the area lying in Zone B. This tract is long and narrow in shape and follows in a general way the line of the Belt Railway tracks which it adjoins. This tract is approximately 950 feet long. Government Exhibit 107 indicates that a strip of land 12 feet wide is ample to accommodate the ditch in question. There is no evidence to the contrary. It is found, therefore, that 11,400 square feet of this area is used and useful and that the remainder is not used and useful.

[fol. 76] 67. A summary of the land found to be used and useful in Zone B.

Total Area		776,060
Excluded as Not Used and Useful:		
Item 7—Part occupied and leased by Anchor Serum Co.	304,914	
Item 9—Part not occupied by ditch	56,000	
Total Area Excluded		360,914
Total Area Used and Useful		415,146

Zone C

68. The area of this zone is 1,073,972 square feet, most of which is devoted to agricultural purposes, feedlot and miscellaneous uses.

Land Devoted to Farming

69. Item 41 (Gov. Ex. 107 and 107-A) consists of a tract of land having an area of 781,244 square feet, triangular in shape, lying south of Lake Road, east of Packers Avenue, and north of the Belt Line Railway. The land is rented for farming purposes and the witness for the Government testified that it is not used and useful in connection with stockyard services. It is the contention of the respondent that this area should be included in the rate base as land to accommodate possible expansion of the stockyard facilities and certain of its officers so testified. At the first hearing respondent's manager was of opinion that in order to extend the stockyard facilities over this area it would be necessary to remove the tracks of the Belt Railway which lie between this area and Zone A as, in his opinion, it would not be feasible to operate over these tracks. Since [fol. 77] the first hearing respondent has relinquished its control over the tracks and consequently its power to remove them without obtaining the consent of the present owner. It is found that the land in this tract is not used and useful in connecton with the rendition of stockyard services.

Land Devoted to Feedlot and Miscellaneous Uses

70. Item 42 (Gov. Ex. 107 and 107-A) consists of land occupied by a feedlot; land on which is located a part of the meter house; land lying north of the feedlot and described as a horse and wagon yard having an area of 36,693 square feet; land occupied by what is described as the old deck having an area of 6,800 square feet; and land lying south of the feedlot and north of the Belt Railway tracks, having an area of 28,901 square feet. There is also in Zone C, adjacent to Item 42, but not within any numbered item, 950 square feet which lies within what would be Missouri Avenue if that street were extended over onto respondent's land. The use to which the land occupied by the feedlot is put is similar to that already described. Accordingly this land is found to be used and useful. The

meter house is owned by respondent and is used in connection with the water service and supply to respondent's stockyard. The land occupied by it is found to be used and useful. There is no testimony in the record which indicates that the area described as the horse and wagon yard, which lies between the feedlot and the old dock, is used in any way in connection with stockyard services. Neither is there any testimony that the area occupied by the old dock is used for stockyard services. The witness called by the Government testified that in his opinion the area occupied by these two tracts is not used and useful. It is found that these tracts are not used and useful. With respect to the area lying south of the feedlot and north of the Belt Rail- [fol. 78] way tracks, respondent's witness testified that this area was necessary for truck parking in connection with trucks handling sheep coming to the drive-in division. It is found that this area is used and useful. The 950 square feet above mentioned appears to be used as a part of the truck parking space and the entrance to the sheep division and for these reasons is found to be used and useful.

Packers Avenue

71. Item 43 (Gov. Ex. 107 and 107-A) consists of land occupied by Packers Avenue from the north side of the Belt Railway right-of-way to the south line of Lake Road which extends through Zone C. In accordance with what has heretofore been said the entire area of this land is found to be used and useful in the rendition of the services for which are charged the rates the reasonableness of which is herein determined.

Vacant Land

72. Item 44 (Gov. Ex. 107 and 107-A) has an area of 11,800 square feet and consists of vacant land located north of the old dock discussed under Item 43. Witness for the Government testified that in his opinion it is not used and useful. The witness for the respondent testified that it was being held for expansion purposes. It is found that this tract of land is not used and useful in connection with the rendition of stockyard services.

73. Item 45 (Gov. Ex. 107 and 107-A) consists of a triangular piece of land having an area of 74,233 square feet and lying west of Packers Avenue, south of Lake Road and north of the Belt Railway tracks. The witness for the

Government testified that it was formerly leased for farm-
[fol. 79] ing purposes but that it is now vacant and unused. The witness for the respondent testified that the property is being held for stockyard use in case there is a demand for it. It is found that this area is not used and useful in the rendition of the services for which are charged the rates the reasonableness of which is herein determined, even though respondent be holding it as a site for future expansion of its stockyard facilities.

Roadway

74. Item 46 (Gov. Ex. 107 and 107-A) is a roadway extending from Packers Avenue on the west along the northerly line of the Belt Railway tracks to the west line of Item 42. At the time of the first hearing in this case this roadway had been closed and not reopened for use. The witness appearing for the Government testified that it is now open and that there is some evidence of its having been used but that it is unimproved and not suitable for truck traffic except when the road is dry. The witness called by the respondent testified that this roadway gives a short cut-off between the sheep drive-in division and the hog and cattle drive-in divisions and is available for use by trucks delivering more than one species of livestock. The evidence shows that in addition to this roadway there are available two roads which are paved their entire length between the truck-in divisions of respondent's property. There are times when Item 46 is used by patrons of respondent's market but it is apparent from an analysis of the entire record that this roadway is not altogether essential to the respondent in the conduct of its business. It is found, however, that the land occupied by it is used and useful.

[fol. 80] 75. A summary of the land in Zone C found to be used and useful is as follows:

Item 42—Rockhold Feedlot	78,190
Parking between Belt Railway and sheep barns	28,901
Meter House	144
Item 43—Packers Avenue	17,850
Item 46—Roadway	37,167
Missouri Avenue extended	950
	163,202

Zone D

76. Item 28 (Gov. Ex. 107 and 107-A) is a tract of vacant land, bisected by the right-of-way of the Belt Railway, lying west of Packers Avenue, north of the plant of Swift and Company, south of the plant of the St. Joseph Warehouse and Cold Storage Company and containing an area of 498,152 square feet. It is now vacant and unused with the exception that a steam pipe line extending from Swift and Company's property passes over it to the plant of the St. Joseph Warehouse and Cold Storage Company. The witness for the Government testified that in his opinion this tract is not used and useful for the reason that it was not now and, in so far as he was able to determine, never had been used in connection with the rendition of stockyard services. The witnesses for the respondent contended that this tract is used and useful as a site for the location of a possible additional packing plant. Respondent's contention that this zone should be included in the rate base appears to rest upon its view that it should retain vacant areas to be used as sites for packing houses in the event respondent is able to induce the location of additional packing plants adjacent to its stockyard; that such plants would [fol. 81] increase the buying power at the market and therefore be beneficial to respondent's patrons; wherefor its present patrons, consisting chiefly of the so-called original shippers, should pay the carrying charges on such vacant and unused land. At the first hearing respondent's manager testified that, though no new packer had located adjacent to the stockyard, he was then in negotiation with one to do so. Cross examination revealed that the packer referred to was doing business in the vicinity of St. Joseph, Missouri, and already purchasing on the St. Joseph Stockyard his entire requirements of livestock. At the second hearing, held some two years later, the packer had not been induced to locate at the stockyard. The matter resolves itself into the question whether respondent's present patrons should be made to pay the carrying charges on land from which they derive no use on benefit because there is a speculative prospect that at some time in the indefinite future it may be converted into a use which may in some indirect way benefit respondent's then patrons. Answering that question in the negative, the area is found to be not used and useful in the rendition of the services for

which are charged the rates the reasonableness of which is herein determined.

Zone E

77. Item 33 (Gov. Ex. 107 and 107-A) which consists of the entire area of Zone E is used in connection with the O'Connell feedlot. Its area is 444,927 square feet. In accordance with the discussion of the feedlots under paragraph 58, the area in this zone is found to be used and useful.

[fol. 82]

Zone F

78. Item 32 (Gov. Ex. 107 and 107-A) is the land in Zone F and has an area of 2,001,626 square feet. It is located south of the general area occupied by respondent's stockyard and is separated from it by the tracks of the Belt Railway Company. With the exception of a ditch running along the northern boundary of the tract, it consists of farm land. The witness called by the Government testified that because of its use for farming purposes it is not in his opinion used and useful in connection with the rendition of stockyard services. The witness called by the respondent contended that this tract is used and useful as a site for a possible large packing plant and that the area occupied by the ditch is used and useful for the reason that it drains an area which is actually used in the rendition of stockyard services. It appears that the land occupied by the ditch is primarily used for draining the remainder of the land in the zone and only secondarily for carrying water accumulated from respondent's Zone B. The remainder of the area is not used in any way in connection with the rendition of stockyard services. It is found that the area included in this tract is not used and useful.

Zone L

79. Items 36 and 37 (Gov. Ex. 107 and 107-A) consist of a roadway, having an area of 42,400 square feet located in Zone L, from Lake Road to a dump located on the bank of the Missouri River; the city dump; and farm land. The witness for the Government testified that the roadway is used by the city and by the public for ingress and egress to the city dump and for that reason it is not, in his opinion, used and useful. He further testified that the roadway is

[fol. 83] leased to the city. A witness appearing for the respondent contended that this roadway was used and useful for the reason that respondent has occasion to haul various waste materials to the dump and that facilities for use in connection with the disposal of such waste materials are necessary. It is found that the land included in the roadway is not used and useful. The witness for the Government testified that Item 37 consisted of farm land. The witness for the respondent called attention to the fact that an area of 21,960 square feet of this item located on the bank of the Missouri River at the point where Item 36 reaches the river is occupied by a refuse dump, and the witness further testified that this dump was necessary to the respondent. It is found that the land occupied by this dump is not used and useful in connection with the rendition of stockyard services.

Zone N

80. Respondent concedes that none of this zone except an area of 36,600 square feet used for manure disposal and an area of 15,075 square feet designated a private road is used and useful or should be included in the rate base. There is no dispute in the evidence as to the used and useful character of the area devoted to the disposal of manure and it is here found to be used and useful. The area of 15,075 square feet designated by respondent as a private road and shown on Government Exhibit 107 and 107-A as part of Item 40 is merely respondent's right of reversion to the land underlying a public street known as Exchange Street. Respondent's contention is that because it owns the fee simple title to land over which the public has and is using an easement for a street and because that street [fol. 84] is one of the avenues used by truck drivers in hauling livestock to the public stockyard such land should be included in the rate base, even though it is not physically connected with any part of respondent's stockyard. To state this contention is to answer it and the 15,075 square feet involved is found to be not used and useful.

Zone 1

82. A part of Item 48, having an area of 1,966 square feet, is occupied by a part of the feedlots used principally by Stevens and Williams. The use of this area is similar to that discussed under paragraph 58 and, accordingly, it is

found to be used and useful. A part of Item 48, having an area of 3,951 square feet, is occupied by the entrance to these feedlots leading from Illinois Avenue. It is found that this area is also used and useful.

83. Item 49 (Gov. Ex. 107 and 107-A) consists of a part of Lot No. 5 located south of Illinois Avenue. On this area, 1,975 square feet, is located part of a building now vacant which at the time of the first hearing was occupied by a harness shop. There is no evidence that the former use of this building was connected in any way with the respondent's business as a stockyard operator, and as the building is now vacant and unused it is found that the building and the land owned by the respondent on which part of the building is located is not used and useful.

84. Item 50 (Gov. Ex. 107 and 107-A) consist of land having an area of 15,805 square feet occupied by the Transit House Hotel. The witness for the Government testified that the hotel is operated in the same manner as any commercial hotel; that the patronage is limited and the facilities are availed of principally by commercial truck drivers [fol. 85] who haul livestock to respondent's stockyard. He stated that in his opinion this property is not used and useful in connection with the rendition of stockyard services. Witnesses appearing for the respondent contended vigorously that the operation of this hotel is a necessary incident to the operation of the stockyard. The evidence shows that the hotel was built many years ago; was constructed at a time when transportation facilities between the stockyard area and the main up-town area were limited and that at the time of its construction there was need for hotel facilities near respondent's stockyard. It appears that at the time of the first hearing herein this hotel was leased for a rental of $1,200 a year under a contract whereby the books of the operator were open to respondent's inspection and, whenever it appeared that the business done warranted an increase of the rental, it might be so increased. The business had not justified such an increase up to the time of the second hearing. The decadence of this property as an income producer has resulted principally from the development of good roads, motor vehicles and the street-car system which connects it with the main business section of the city of St. Joseph,

as well as from the change which has come about in the method of marketing livestock. Respondent's contention is that the maintenance of this hotel is needful and the property should be included in the rate base because it is necessary that there be a clean, comfortable place near the stockyard at which drivers of livestock trucks, shippers to respondent's stockyard, and other persons coming to the stockyard may stop, even though they cannot or will not pay rates sufficient to produce revenues great enough to pay taxes, insurance and upkeep of the property, to say nothing of a return on its value. It is respondent's contention, [fol. 86] therefore, that the general patrons of its stockyard should contribute, through rates, moneys sufficient to yield it a fair return on approximately $100,000 which it claims to be the value of this property. The record does not reveal any way in which the maintenance of this hotel contributes to the performance of the services rendered by the respondent to those who pay rates at its stockyard. If the property be included in the rate base the practical effect is that an annual charge will be levied upon respondent's patrons, principally the original shippers, to maintain for truck drivers and others who care to avail themselves thereof hotel facilities more expensive than they can or will pay for. Moreover, it does not appear that the operation of a commercial hotel is a stockyard service. Accordingly, this item together with the structures thereon is found to be not used and useful in the rendition of the services for which are charged the rates the reasonableness of which is herein determined.

Zone 2

85. A part of Item 48 (Gov. Ex. 107 and 107-A) having an area of 136,956 square feet is occupied by a part of the feedlots described under paragraph 82. This area is accordingly found to be used and useful.

86. Item 51 (Gov. Ex. 107 and 107-A) consists of a small tract of land having an area of 2,000 square feet adjoining Lake Avenue on which is constructed a small blacksmith shop which is operated commercially. It is found that this tract of land and the structure located on it are not used and useful in connection with the rendition of stockyard services.

[fol. 87] Zone 3

87. A part of Item 48 having an area of 200,640 square feet is occupied by feedlots which are a part of the feedlots mentioned under paragraph 82. Accordingly, this area is found to be used and useful.

88. Item 52 (Gov. Ex. 107 and 107-A) consists of a tract of land containing 201,643 square feet which is leased to the Kelsey Nurseries, a commercial enterprise. It is found that the land located on this tract is not used and useful in connection with the rendition of stockyard services.

89. Item 53 (Gov. Ex 107 and 107-A) consists of an area of 223,326 square feet located in Lots 1 and 12 which lie south of the area known as the old horse and mule division now occupied by feedlots. This land is vacant and unused. It is found that it is not used and useful in connection with the rendition of stockyard services.

90. A summary by zones of the land hereinbefore found to be used and useful and found to be not used and useful is as follows:

[fol. 88]

Zone	Used & useful square feet	Not used and useful square feet	Total square feet
A	3,003,973	120,416	3,124,389
B	415,146	360,914	776,060
C	163,202	910,770	1,073,972
D		498,152	498,152
E	447,927		447,927
F		2,001,626	2,001,626
F-1		38,071	38,071
G		991,077	991,077
H		449,234	449,234
I		409,464	409,464
J		1,083,468	1,083,468
K		700,577	700,577
L		797,843	797,843
M		545,197	545,197
N	36,600	2,420,722	2,457,322
1	5,917	17,780	23,697
2	136,956	2,000	138,956
3	200,640	424,969	625,609
Total	4,410,361	11,772,280	16,182,641

Land for Expansion

91. During the first hearing in this case data were introduced showing the acreage of land brought into use since 1915. Evidence was also introduced showing the area of land which had gone into disuse. The net additional area of property actually brought into use during this period amounts to less than thirteen acres. Since the data of the first hearing a small additional area has been brought into use which amounts to a fraction of an acre. Witnesses appearing for the respondent testified that in their opinion the volume of livestock received at the market would tend to decrease rather than to increase. They testified further that any increase in the percentage of livestock received by truck would require additional facilities. The record in- [fol. 89] dicates, however, that the policy of the company in the past has been to remodel existing facilities in connection with the increase in truck receipts. Based on the entire record, it appears that, when consideration is given to the area of land in Zone A found to be used and useful, which includes areas of vacant land, ample provision is made for any need for expansion for a reasonable time in the future. Furthermore, the land occupied by present feedlot facilities and packers' holding pens is so located that in the event it becomes necessary for respondent to expand its other facilities this land will be available for use. It is found, therefore, that no land in addition to that heretofore found to be used and useful should be included as used and useful under the designation of expansion land.

Structures

92. It is found that all structures on land found to be used and useful are also used and useful, and it is further found that all structures located on land found not to be used and useful are also not used and useful.

IV

Valuation of Used and Useful Land

93. Respondent's land was valued by two appraisers for the Government; one called at the first hearing and the other at the second. It was also valued by three apprais-

ers for the respondent. One of these testified at both hearings, one at the first hearing only, and one at the last hearing only.

94. W. L. Mack, a witness called by the Government during the first hearing, resided in St. Joseph, Missouri, and was engaged in the real estate business in that part of the city known as South St. Joseph, for approximately 20 years. [fol. 90] The greater volume of his business was in South St. Joseph. At one time he specialized in sub-divisions. He was a member of the Real Estate Board. His appraisal experience consisted of approximately five months' work in connection with revaluing property in St. Joseph for tax purposes; approximately $200,000 worth of property for the school board; the valuation for the Burlington railroad of cheap residential property located in Florence Addition adjacent to the stockyards and miscellaneous minor tracts. The valuation of respondent's property in this proceeding is the largest appraisal made by this witness. Mack submitted two appraisals. In one of these he appraised the property taking into consideration the fact that it was being used for stockyard purposes. He stated with respect to Zone A: "Thirty-five cents was the value I placed upon the land when used for stockyard purposes. I had no idea of appraising it for any other purpose than that." In the other he considered the use of the property for non-stockyard purposes. The witness Mack showed a number of transfers of property which had taken place in and about South St. Joseph some of which were in the immediate vicinity of respondent's property. He stated, however, that the only ones to which he had given weight were certain transfers in connection with Tract 14 on which is located the Transit House. He stated that, in his opinion, the other transfers had no bearing whatsoever on the value of respondent's land. As to his method of arriving at value he said: "I based my appraisal of respondent's land outside of the corporate limits of St. Joseph on my intimate knowledge of the cost of producing it, the valuation of it as a stockyards, brought about by a city of its size and character; the accommodation of the agricultural country furnishing adequate market for its products such as corn and [fol. 91] livestock of various kinds. In making my appraisal I used my general knowledge gained in my experience as a real estate man."

95. John A. Zelinski, the witness called by the Government in the second hearing, is a civil engineer graduated from Ohio State University and is a resident of Washington, D. C. He has engaged in general engineering work and was at one time assistant city engineer for Painesville, Ohio. He was employed by the Interstate Commerce Commission from 1917 to 1928, except for approximately twenty months when he was in the United States Army, and a part of a year when he was engineer for the Diamond Alkali Company of Fairport, Ohio, and the Fairport, Painesville and Eastern Railroad. During the period he was with the Commission he occupied all of the positions in the appraisal work from Junior Land Appraiser to Assistant Supervisor of Land Appraisers. During this period he was connected with the appraisals of the Pennsylvania Railroad lines east, including the terminals at Cleveland, Detroit, Pittsburgh, Philadelphia, New York and Washington, and the New York Central properties at New York, Buffalo, Cleveland and similar cities. In 1928 he became Assistant Director of Research for the National Association of Owners of Railroad and Public Utility Securities. Since 1929 he has been engaged in privat practice as a consultant on railroad and utility regulatio . As a consultant he has valued lands for the Pere Marquette Railroad, the Virginian Railway, the Western Maryland Railway, the Lake Superior and Ishpeming Railroad, the Canton Railroad of Baltimore, the Louisiana and Northwest Railroad, the Unity Railways of Pittsburgh, and the Aliquippa Southern Railroad. In 1931 he appraised the lands of the Omaha Union Stockyards Company, Omaha, Nebraska. He also appraised the lands [fol. 92] of the Sioux City Stockyards Company, Sioux City, Iowa. In making his appraisal of respondent's land, Mr. Zelinski obtained information from the Interstate Commerce Commission relative to valuation proceedings in connection with the St. Joseph Belt Railway, whose land adjoins that of respondent. With two of the appraisers employed by respondent he made an investigation of 147 transfers of property in the vicinity of respondent's stockyards. He made on the ground a study of the use of respondent's land; accessibility to it by roads, streets and railroads, the character and kind of railroad and switching facilities available. He gathered general statistical information which might have a bearing on the general value situation in the

territory. He personally viewed and studied each of the zones into which he divided the property and upon which he placed a value. In arriving at his appraisal value of the various zones, Zelinski used primarily the values determined from sales of the most nearly similar, and comparable property. These values were modified in accordance with differences which affect values between the properties of the respondent and those used for purposes of comparison.

96: William E. Spratt, a witness called by the respondent in both the first and second hearings and who submitted an appraisal of respondent's property at each hearing, has resided in St. Joseph, Missouri, for more than forty years and for many years has been engaged in the real estate business. He has been prominent in city activities, having been president of the St. Joseph Chamber of Commerce, the Rotary Club and the Automobile Club. He was for two years mayor of the City of St. Joseph. He was also secretary of the St. Joseph chapter of the Red Cross Society. In connection with his real estate business he has made ap- [fol. 93] praisals of numerous properties located in the City of St. Joseph, and valued for the St. Joseph school board thirty-four lots located in St. George's addition, not far from respondent's property. He served on a commission which condemned for parkway and boulevard purposes some 600 acres of land, consisting of approximately 1,100 parcels. He made an appraisal for the Burlington Railroad, a number of years ago, of some 60 or 70 houses or lots and later was employed by the same company to purchase about 100 houses and lots in connection with the company's development of its Florence Yards. In 1917 he was employed jointly with Atkinson by the six trunk line railroads entering St. Joseph to value all the land in the city, exclusive of improvements, owned by those carriers. The value of this property totaled $8,000,000. In 1921 he was employed by the St. Joseph Water Company to appraise the real estate holdings and rights-of-way of that corporation. In 1925 he appraised a number of properties for the St. Joseph Gas Company. He has appraised a number of properties for the Union Terminal Railway Company and of the Belt Railway Company. He is the local examiner and appraiser for the Santa Fe Savings and Loan Associa-

tion and the Metropolitan Savings and Loan Association of Kansas City. Since the date of the first hearing he has assisted in appraising the land of the St. Joseph Water Company, the St. Joseph Light and Power Company, and individually has appraised the land of the St. Joseph Gas Company. He re-appraised the land of the respondent company for its hearing before the court during the injunction proceedings in this case. In 1930 he testified in proceedings involving the recapture of excess earnings of the St. Joseph Belt Railway Company. In the preparation of his appraisal for the first hearing in 1929 he made a thorough study of the City of St. Joseph, including its popula-
[fol. 94] tion, civic improvements, schools, public libraries, fire protection, public utilities, and the labor supply available. He took into consideration the location of the packing houses, the Belt Railway, and the interdependence of the stockyards, the railway, and the packing house industries. He ascertained the volume and [illegible] of livestock passing through the stockyards, the volume of business passing through the banks, and the payroll of employees of the various industries. He stated that the land adjoining does not make the value of the stockyards property, but that the value of the stockyards and allied interests established the value of the adjoining land. He further stated that, in his opinion, it is not fair and just to these properties to gauge and establish the values of these lands by the price at which unimproved adjacent real estate can be purchased. He stated that he had not taken values as reflected by sales and literally applied them to the adjoining land, but had considered them altogether with many other things which were taken into consideration before reaching the final unit value. He stated that the three properties, that is, the railroad, stockyards, and packing house properties are the only properties of similar character in that section and that in valuing the property of respondent he had given it the value of the only adjacent similar land, that is the packing house land and the railroad property. In this connection he called attention to a lease made by respondent to the St. Joseph Belt Railway Company, a subsidiary corporation, wherein the rental is on the basis of yielding a 6 per cent return on a value of 30 cents per square foot. The record shows that this witness made the appraisal of the property leased, upon which the consideration in the lease

was predicated. In arriving at the appraised value of respondent's property, the witness stated that he had arrived [fol. 95] at his conclusion of the value of the land based on all things considered, plus years of experience in the real estate business. He stated that there were many other elements which go to make up market values but that the all-persuading argument is the adaptability of a particular tract for its intended use, and that property is only valuable because it produces an income, or returns a profit, or serves a purpose. He further stated that the proper method in valuing a piece of property is to consider it for its highest and best use and that he considered the land of the St. Joseph Stockyards to be so used at the present time.

99. Frank N. Atkinson, who was called by the respondent in the first hearing and subscribed to the joint appraisal submitted by Spratt and himself, had been in the real estate business in St. Joseph for forty-three years. He was the first president of the Real Estate Exchange in St. Joseph and served as city postmaster for many years. He operated a strictly real estate business, but for a number of years had loaned money on real estate. In addition to acting as an agent in connection with his real estate business he had also acted as a broker and had constructed and sold homes in different locations in the city. In connection with two other real estate men he purchased the holdings of the St. Joseph Terminal Company. He acted as agent for the St. Joseph Light and Power Company and served with Spratt for the city in connection with the condemnation proceedings involving the city hall property and the park and boulevard system. With Spratt he appraised the land owned by the St. Joseph Gas Works and the St. Joseph Water Company and served with Spratt in the appraisal of the real estate holdings of the Union Terminal and the six trunk lines entering St. Joseph. He has specialized in fur- [fol. 96] nishing expert opinions and advice on the value of St. Joseph real property. He stated that there can be no invariable formula in the appraisal of real property and that he feels that the value of real property depends upon what is in the mind of the prospective purchaser when he purchases the property. As to his method in arriving at value he stated: "In summing up, with my conscience as my guide and depending on my general knowledge, and

considering the importance, value and magnitude of these great going concerns, and realizing that no exact formula can be laid down in the matter of real estate values, I feel that for the specific purposes of the stockyards' upbuilding and further development and expansion, no greater setting on the face of the earth will or can be found in St. Joseph or elsewhere comparable to the land on which these plants are located."

100. Mr. Theo. J. Quinn, a witness called by the respondent, who submitted an appraisal at the last hearing, has lived in St. Joseph for about twenty-eight years and has been in the brokerage end of the real estate business since 1922. Prior to that time he was employed by the Empire Trust Company, and in his employment was familiar with the loans made by that company. Since about 1925 he has been operating independently with Robert E. Gardner under the firm name of Gardner and Quinn. His business consists of handling residential, retail, industrial and subdivision properties, acting as a broker. In addition the firm has an insurance business. The firm has had charge of purchasing sites for filling stations operated by the Shell Oil Company, the Mid-Continent Petroleum Corporation, the Independent Oil Company, the Skelly Oil Company, and the Sinclair Refining Company. Quinn is a member of the Real Estate Board and has served at various times on its appraisal committee. He shared in the appraisal of some [fol. 97] $200,000 worth of property taken over by the city for school purposes and appraised the Sinclair Refining Company's real estate in 1929. He was employed by the owners of property which was taken by the State of Missouri for highway purposes and has done appraisal work for building and loan associations. He acted on a committee which appraised the property of the St. Joseph Light, Heat and Power Company. He has sold properties in the stockyards district near South St. Joseph. The Street Railway Company's properties which he assisted in appraising extend into that district. In making the appraisal of respondent's property he spent approximately a month. He visited each of the zones, noted the character of the land and the character of the uses to which each was put, and also the improvements thereon. He gave consideration to accessibility for vehicular traffic and also the accessibility afforded

by the Street Railway Company, railroads and bus service. In company with Spratt and Zelinski, he made a check of the 147 transfers previously referred to and inspected the premises covered by practically every one of them. In arriving at the value he gave consideration to railroads entering St. Joseph, the highway system the population of the city, civic improvements, protection afforded by fire and police departments of the city, utilities serving the city, which elements he stated are wide forces behind the stabilizing and maintenance of values. He also gave consideration to the volume of receipts of the respondent company, the intensity and use of the land, and the fact that the services of this company are an integral part of a coordinated service rendered by the St. Joseph Belt Railway and the fifth largest packing center in America.

[fol. 98] Zone A

101. At the time of the second appraisal, in the year 1932, Mack and Atkinson had died. In that appraisal Zelinski found this zone to have a value of $5,000 per acre or approximately 11.5 cents per square foot. Spratt was of the opinion that it was then worth 26 cents. Quinn appraised it at 35 cents per square foot. The record indicates that each of the witnesses was seeking to place upon this zone normal values, not depression or stagnation prices. The variations in the unit values arrived at are so wide as to lead to the conclusion that the cause lies in the methods employed rather than in the usual variance of judgment or opinion.

102. The appraisal of the witness Quinn seems to rest upon general judgment rather than an analysis of the sales and other transactions in real property similar and adjacent to Zone A. Such also was the case of the appraisals of the witnesses Mack and Atkinson in the year 1929. The witnesses Spratt and Zelinski had had more experience in the appraisal of land for rate making purposes than any of the others. As between those two Spratt had the advantage of long residence in the community where the land lies and Zelinski the advantage of a more thorough training and experience in the principles of public utility land appraisal. Both of them relied upon the same general group of property transfers and transactions in the vicinity, though it is

probable that in arriving at their conclusions they gave different relative weights to the same transfers. The testimony of Zelinski reveals a more scientific analysis of such transfers and transactions and a more accurate relation of them to the value found for Zone A than does that of Spratt. In determining his value of Zone A, Zelinski stated that he gave weight to five sales or groups of sales, which in [fol. 99] his opinion had bearing in reflecting the value of that zone. One of these, known as Sale 5, conveyed 31/100 of an acre to the St. Joseph Warehouse and Cold Storage Company, whose plant lies directly west of part of Zone A. This small tract lies immediately west of the plant of the purchasing company, and was acquired in 1919 at the rate of $5,000 per acre, or approximately 11.5 cents per square foot, for expansion purposes. While there was some relationship existing between the grantor and grantee the circumstances were such as to lead Zelinski to believe that the purchase price reflected the real value. The second sale, known as No. 10, consists of a tract of land formerly a part of respondent's Zone N and located north of Lake Road at the intersection of Packers Avenue. It surrounds on the west, north and east the portion of Zone N which respondent now uses as a manure dump and lies a short distance north of the northwest corner of Zone A. It contains 4.2 acres and was purchased in 1930 by the Union Terminal Railway Company from respondent. The consideration was $3,000 per acre or a little less than 7 cents per square foot. In 1929, 1.2 acres of this tract was leased to the Shell Petroleum Corporation for an annual rental which, capitalized at 7 per cent, represents a value of $3,000 per acre. In the same year another portion of it was leased to the Painter Oil Company at a rental which, so capitalized, amounts to a value of $4,280 per acre or less than 10 cents per square foot. The third group consists of Sale 11 to the Larabee Flour Mills Corporation, Sale 12, from respondent to an agent of the Union Terminal Railway Company and Sale 14, from such agent to the Larabee Flour Mills Corporation, the latter covering a portion of the land heretofore included in Sale 12. These three tracts, 11, 12 and 14 lie immediately west of respondent's Zone N, 11 being the most [fol. 100] northerly of the tracts and 12 the most southerly and nearest to Zone A. With this group the witness considered 3 and 4 which lie immediately west of 11 and 14 and

constitute the site of the St. Joseph public elevators. Sale 11 consisting of 5.74 acres was made in 1918 at the price of $2,000 per acre or 4.6 cents per square foot. Sale 12 involved the conveyance in 1919 of 11.765 acres at $2,000 per acre. Sale 14 occurred in 1920, the consideration being $3,500 per acre or approximately 8 cents per square foot. Sales 3 and 4 containing slightly more than one acre were made in 1920 at the price of $3,000 per acre or a little less than 7 cents per square foot.

103. The group of sales spoken of in the record as Grain Belt Mills sales and designated at 6, 7 and 8 consists of three tracts of land lying approximately 800 or 900 feet west of the northerly part of the cattle division in Zone A. Sale 6 consists of 4.67 acres purchased by the Grain Belt Mills at $2,660 per acre or approximately 6.1 cents per square foot. Sale 7 consists of one-half acre adjoining sale 6. It was purchased by the same company in 1922, at $3,676 per acre or approximately 8.4 cents per square foot. Sale 8 consists of .92 of an acre adjoining Sale 7 purchased by the Union Terminal Railway Company for the purpose of straightening out its right-of-way. The consideration was $5,255 per acre or approximately 12 cents per square foot. The Famo Mills sales designated as 34, 35, 38, 39, 40 and 41 represent the purchase of several lots located within the corporate limits of the city of St. Joseph and having frontage on both the Chicago, Rock Island and Pacific Railway tracks and Cherokee Street, which is one of the principal retail streets of South St. Joseph. These lots are east of the Exchange Building and the cattle division in Zone A and separated from that zone by the tracks of the Belt Rail-
[fol. 101] way and three trunk line carriers. The consideration for these sales varies from 4 cents per square foot to 28.2 cents, the weighted average being 15.6 cents. In connection with these sales the purchaser was able to vacate without cost, alleys located between these lots. The area obtained was greater than that paid for. Each of these lots is situated along the right-of-way of the Chicago, Rock Island and Pacific Railway and has the benefit of trackage without expense for industrial track right-of-way. An analysis of the evidence with respect to sales considered by Zelinski, including a comparison of the advantages and disadvantages of the land concerned with those of the land

in Zone A, leads to the conclusion that these sales substantially support the value found by him for Zone A.

104. Spratt's first experience in the appraisal of lands of respondent and its allied companies was when, subsequent to the year 1923, he appraised respondent's lands occupied by the St. Joseph Belt Railway as a right-of-way. This he did by means of comparison with respondent's adjoining land used for stockyard purposes, but he obtained the value of the last-mentioned lands by capitalizing at 6 per cent the income derived by respondent from the conduct of a stockyard on those lands at the prevailing stockyard rates. Thereupon respondent, whose executive officers were the same as the railway company's, leased the right-of-way to the railway company, its wholly owned subsidiary, at a rental amounting to 6 per cent per annum of the value so found by Spratt. In 1929 Spratt appraised Zone A at 30 cents per square foot, based upon the valuation theretofore found for the railway right-of-way, and the lease made by respondent covering that right-of-way. In 1929 respondent and the railway company entered into an arrangement whereby the title to the right-of-way of the [fol. 102] latter was transferred from respondent's books to those of the railway at a stated consideration which was the same as the appraised value placed upon the right-of-way by Spratt as above described. In the year 1929 respondent in an arm's length transaction sold to outside interests the entire capital stock of the railway company. But when Spratt in the year 1932 came to make a reappraisal of respondent's Zone A he relied upon the consideration stated in the mere paper transaction between respondent and its subsidiary, the railway company, rather than upon the later sale to outside parties. He stated that both of these transactions were considered and both corroborated his value of 30 cents found in 1929 and of 26 cents found in 1932. It is apparent from this and other of his testimony that his later value of 26 cents was merely a scaling down of his former finding of 30 cents, due to a decrease brought about by economic changes. However, on cross examination this witness repeatedly evaded the request that he show by analysis how the sale of the railway to outside interests substantiated his values either of 30 cents or 26 cents per square foot.

105. While a considerable portion of the railway right-of-way land lies north and west of the packing plants and is not of as high unit value as the lands in Zone A, another considerable portion of it lies between Zone A and the southern portion of the City of St. Joseph and is more valuable than the land in Zone A when that zone is considered as a whole. Moreover, Spratt regarded the value of the right-of-way land as closely intertwined with that of Zone A. Analysis of the only arm's length transaction which involves this right-of-way land shows that it supports neither the valuation placed on Zone A by Spratt nor by Zelinski, but a valuation falling between those two.

[fol. 103] 106. In the year 1930 there was pending before the Interstate Commerce Commission a recapture proceeding under the Transportation Act, which proceeding was known as Finance Docket No. 3906, Excess Income of St. Joseph Belt Railway Company. In this proceeding, Spratt testified that all the land occupied by the St. Joseph Belt Railway Company was of the value of 30 cents per square foot or a total of $1,195,591 for the 91.49 acres so occupied. The other elements of value, namely structural property, going concern and other intangibles, were appraised and testified to respectively by the same witnesses who appraised and testified for respondent in the instant proceeding. Based on the testimony of Spratt and these other witnesses the Belt Railway Company contended that, including a working capital of $44,000 computed by a witness for the Interstate Commerce Commission, the value of the railway for rate making purposes in the year 1928 was $2,500,342. In the fall of the year 1929 respondent sold to outside interests the entire properties and the business of the St. Joseph Belt Railway Company. The consideration was $1,500,000. The transfer of ownership was affected by a transfer of the entire capital stock, there being no other securities outstanding. The actual sale of the property was for a price which was 60 per cent of its value as appraised by Spratt and the other witnesses on behalf of the railway company in the proceeding before the Interstate Commerce Commission. There is nothing in the record to indicate, and it is not to be presumed, that this discrepancy between the appraised value and the sale value applied in any greater or less degree to the land than to the other elements

of the property. It is reasonable to conclude that the sales value of the land was 18 cents per square foot, that is 60 per cent of the 30 cents per square foot estimated by Spratt.

[fol. 104] 107. All of the witnesses who testified in this proceeding relative to land values were in agreement that the highest and best use to which the lands in Zones A and B could be put was for stockyard purposes. It follows, therefore, that considered as land only, without reflecting in value the income of the business now being conducted upon them, their highest value arises from their adaptability to and availability for stockyard uses. The testimony of Spratt shows that it was his opinion that from the standpoint of availability and adaptability, as distinguished from actual present use and the income from such use, the lands in Zones A and B each had as of 1929 a value of 15 cents per square foot and as of the time of the last hearing, 13 cents. He said at the first hearing: "I think that the land in the stockyards is used today for its highest and best purposes * * *. My difference of 15 cents per square foot in the valuation of tract B is because it has not been brought into its highest and best use. When it has been brought into that use I think it will be worth just as much as the land in tract A. If respondent were expanding the hog pens over onto Zone B, I would think so much of that tract as the pens covered would immediately become worth 30 cents per square foot * * *. I do not, of course, include the value of superstructures, but I think that having superstructures upon the land increases the value of the land * * *. I did not specifically, absolutely, and by itself use the net income of the stockyards company in arriving at my valuation of the stockyards property * * *."

108. At the last hearing he said: "There has not been any change in my views as to the factors which govern or affect land values. There has been no change in my views as to the factors which govern and affect the values of land of respondent except as noted in my report, the [fol. 105] general depression * * *. As a developed piece of land, I know it (Zone A) is more valuable than any undeveloped piece of ground * * *. The use of any land depends upon and governs its value. That is true of all land. Use of land makes value, and availability to use makes value. Availability to use, and on top of that actual use, makes value * * *."

109. From the foregoing analysis of the qualifications and testimony of the respective land valuation witnesses it is apparent that there is before the Secretary for consideration, with respect to Zone A, Mack's 1929 value of 35 cents per square foot for stockyard uses, 20 cents for other uses; and Quinn's 1933 value of 35 cents per square foot, each of which constitutes an opinion from general information and not supported by analysis. Zelinski's valuation of 11½ cents is also before the Secretary and is well supported by analysis of transactions in adjacent and similar lands, but fails to give consideration to the most recent sale of the most similar land, the right-of-way of the Belt Railway. The Secretary also has for consideration Spratt's asserted value of 30 cents in 1929 and the complete approval thereof by Atkinson, which approval Atkinson did not attempt to support by analysis, and Spratt's 1933 value of 26 cents per square foot which represents merely a scaling down of his 1929 value because of conditions brought about by the current depression. There is, also, before the Secretary the clear opinion of Spratt that with respect to its adaptability to and availability for its highest and best use there is no difference in value between Zones A and B and that in those aspects each of these zones was worth 15 cents per square foot, 1929, and 13 cents in 1933. In addition there is the actual arm's length sale in 1929 of the Belt Railway right-of-way lands abutting Zones A and B. While the price paid for the [fol. 106] entire property of the Belt Railway Company cannot be apportioned with mathematical accuracy as between land, structures and intangibles, the analysis heretofore made indicates that the use of 18 cents per square foot as the sale price of the land is not unfair.

110. If the 18¢ sale price of 1929 be decreased in the same ratio as Spratt decreased his appraisal of 30¢ in 1929 the figure of 15.6¢ per square foot is obtained. Weighing all of these things and all the facts of record the conclusion is reached and it is found, that the fair value for rate making purposes of respondent's land in Zones A and B heretofore found to be used and useful is 16¢ per square foot; it is further found that this value does not represent depression or stagnation value but constitutes the reasonable normal value of the land giving weight to values exist-

ing immediately preceding as well as those existing during the present depression.

111. It is found, therefore, that the fair value as aforesaid of the total used and useful land in Zones A and B, respectively, is as follows:

Zone A	3,003,973 square feet	$480,635.68
Zone B	415,146 " "	66,423.36
Total	3,419,119 square feet	$547,059.04

Zone C

112. The areas within this zone which heretofore have been found to be used and useful consist of 108,185 square feet in the extreme southeast portion thereof, 17,850 square feet in the western portion and a narrow strip containing 37,167 square feet in the extreme south central portion and abutting the right-of-way and tracks of the Belt Railway or a total of 163,202 square feet out of a total zone area of 1,073,972 square feet.

[fol. 107] 113. The unit values placed on this zone by each of the land valuation witnesses considered the zone as a whole. In the first hearing, each of the three witnesses placed upon the zone a square foot value of 15¢. In the second hearing Zelinski appraised this zone at 9.02¢, Spratt 11¢, Quinn 12.5¢.

114. The most applicable land transaction in point of time, proximity and similarity is that designated in the record Sale 10. It involved a conveyance in 1930 by respondent to the Union Terminal Railway Company of 4.2 acres of land immediately across Lake Road from the western portion of Zone C. The consideration was $3,000 per acre or approximately 7¢ per square foot. According to the theory that plottage and assembly lends the large tracts of land a greater unit value than is possessed by smaller tracts, the approximately 25 acres in Zone C would have a greater unit value than the approximately 4 acres in Sale 10. But applying the same principle would produce the result that the three used and useful portions of Zone C would have a less unit value than the Zone as a whole. On the contrary, the position is here taken that the portions of Zone C which are found to be used and useful have a

somewhat higher unit value than the zone as a whole. Among the reasons for this are that they are smaller in area and also are more favorably located than some other portions of the zone. While, therefore, the most applicable actual land transaction comes more nearly to supporting Zelinski's value of 9.02¢ per square foot for the Zone as a whole than the value determined by any of the other witnesses, it is found that the fair value for rate making purposes of the three used and useful portions is 10¢ per square foot or a total of $16,225.20.

[fol. 108] Zone N

115. The only land in Zone N which has been found to be used and useful is the 36,600 square feet devoted to manure disposal purposes. That area is surrounded on three sides by the land involved in Sale 10, heretofore discussed. At the first hearing, Mack was of opinion that Zone N as a whole was worth 15¢ per square foot while Spratt and Atkinson placed upon the zone a square foot value of approximately 8¢. At the second hearing, Zelinski and Spratt valued the zone as a whole at $3,000 per acre or slightly less than 7¢ per square foot. Quinn was of opinion that it was worth 8¢. Inasmuch as the consideration for Sale 10 was $3,000 per acre and it is the most applicable sale in time, proximity and similarity, it would appear that Zelinski and Spratt gave controlling consideration thereto. Whether or not that be true as to the zone as a whole, it is difficult to conceive for this small manure disposal area a value different from the exactly similar tract which lies on three sides of it. Therefore, its value for rate making purposes is found to be 7¢ per square foot or $2,562.00 for the area as a whole.

Zone E

116. While there is some testimony to the effect that this zone is being held as a site for a possible new packing plant, the remoteness of that possibility, as indicated by the record as a whole, is such that it is not reasonable to conclude that there is a sufficient probability of that use to render that its highest and best use. From all the circumstances, the conclusion is reached that, like Zones A, B and C, its highest and best probable use is for stockyard purposes. On that basis, it becomes pertinent to compare it

with those zones. The principal differences between it and [fol. 109] Zones A and B are its greater remoteness from public highways and the fact that those two zones lie between the Belt Railroad and both of the packing plants in such a way that, during the marketing process, livestock moves naturally from the rail-unloading docks to both of the packing plants over the shortest dimension of those zones. While Zone E actually adjoins Zone B, it seems more nearly similar to Zone C than it does either to Zone A or Zone B, when its value is considered from the standpoint of stockyard use. Though Zone C has much greater accessibility to public streets than has Zone E, the latter lies within the ring of the Belt Railway and the former without that ring. Use of Zone C for stockyard purposes would necessitate operating across several tracks of the Belt Railway in order to reach the packing plants. A former general manager of respondent's stockyard was of the opinion that so to do would not constitute good management. Weighing these respective advantages and disadvantages, it would appear that Zones C and E, taken as a whole, have approximately the same value. However, the land valuation witnesses were not in agreement as to this. Zelinski placed upon Zone E a value of 7¢ per square foot, which was 2.05¢ less than he put on Zone C. Quinn thought E was worth 10¢ per square foot, or 2.50¢ less than C.

117. Spratt considered each to be worth 11¢ at the second hearing and 15¢ at the first. Atkinson believed both to have a value of 15¢ and Mack placed upon E a worth of 25¢ as compared to 15¢ for C. The opinions of Spratt and Atkinson in this regard appear to be better founded than those of Zelinski, Quinn and Mack. The comparative area of Zone E to be used and useful land of Zone C does not vary sufficiently to warrant a finding of a less unit value with respect to the former. Considering the respective [fol. 110] values placed on Zone E by each of the valuation witnesses, together with the facts above mentioned, it is found that the value for rate making purposes of the land in that Zone is 10¢ per square foot or $44,792.70 for the 447,927 square feet in the zone.

Zone 1

118. In 1929, Mack was of opinion that this zone as a whole had a unit value of 95¢ per square foot, while Spratt

and Atkinson believed it to be worth 40¢. At the time of the last hearing, Spratt had reduced his valuation to 35¢ but Zelinski and Quinn appraised the land at 50¢. Considering that the used and useful property in this zone fronts on Illinois Avenue in the main retail district of South St. Joseph, its value for rate making purposes is found to be 50¢ per square foot or $2,958.50 for the 5,917 square feet of used and useful land in the zone.

Zone 2.

119. This zone is separated from Illinois Avenue by Zone 1 and property situated similarly to that zone. It, therefore, does not constitute a part of what may be considered the retail district of South St. Joseph. In 1929, Spratt and Atkinson placed on it a value of 18¢ a square foot. By reason of the fact that Mack placed an average value on Zones 1, 2 and 3, considered as one tract, it is impracticable to determine what he deemed Zone 2 to be worth, when segregated. At the time of the last hearing, Spratt was of opinion that the land in Zone 2 was worth 12¢ per square foot while Zelinski and Quinn believed its value to be 13¢. The fair value for rate making purposes of the used and useful property in this zone is found to be 13¢ per square foot or $17,804.28 for the 136,956 square feet thereof.

[fol. 111] Zone 3

120. The used and useful land in this zone lies back of Zone 2 and therefore quite remote from the retail district of South St. Joseph. In 1929, Spratt and Atkinson believed it to be worth 8¢ per square foot. For the reason stated in connection with Zone 2, it is not practicable to determine Mack's idea of its value. At the time of the last hearing, Quinn valued it at 10¢ per square foot, Zelinski at 7¢ and Spratt at 6¢. The used and useful land in this zone contains about one-third of the area of the entire zone. The remaining two-thirds lie yet more remote from the retail district of South St. Joseph, where the highest values prevail. Therefore, while the evidence convinces that Zelinski's average of 7¢ per square foot for the zone as a whole is correct, the used and useful portion of the zone is found to have, for rate making purposes, a value of 8¢ per square foot or $16,051.20 for the 200,640 square feet therein.

Summary of Value of Used and Useful Land

121. A summary of the values of the land heretofore found to be used and useful is as follows:

Zone	Square feet	Rate per square feet	Amount
A	3,003,973	0.16	$480,635.68
B	415,146	0.16	66,423.36
C	163,202	0.10	16,320.20
E	447,927	0.10	44,792.70
N	36,600	0.07	2,562.00
1	5,917	0.50	2,958.50
2	136,956	0.13	17,804.20
3	200,640	0.08	16,051.20
Total	4,410,361		$647,547.84

[fol. 112]

V

Value of Structures

Cost of Reproduction New

122. In preparation for the first hearing in this proceeding, respondent's structural property was inventoried and appraised independently by two duly qualified engineers, namely, Hermann C. Henrici, employed by the Government, and S. F. Kosters, employed by the respondent.

123. Henrici inventoried the property as of August, 1927. For the first hearing he, in effect, brought this inventory up to June 30, 1929, by including in the appraisal the book value of additions and betterments made between the inventory and appraisal dates. Similarly, for the second hearing, he brought the inventory up to August 1, 1932. Kosters inventoried the property as of June 30, 1929, and brought his inventory up to August 1, 1932. At each of the hearings the inventories of the respective engineers were substantially in agreement.

Materials and Labor

124. At the first hearing cost of reproduction new, before general overheads, was in Henrici's appraisal $2,673,529 and in Kosters' $2,826,641, the difference being $153,112. They recommended that the Secretary adopt the mean between their appraisals.

125. The respective appraisals of Henrici and Kosters at the last hearing are not in form to be compared without certain explanations. Originally Henrici inventoried respondent's structural property as of August 1, 1927, and Kosters as of June 30, 1929. With respect to their last appraisals, [fol. 113] they agreed upon August 1, 1932, as, what is referred to as, the "cut-off date." That is to say, they agreed that there should be included in their appraisals the value of all of respondent's structural property existing at that time. To accomplish this, each added to his former appraisal the value, as shown on respondent's books, of additions and betterments made to the property since the original inventories. In principle, they followed the same course in doing this but the practical methods employed were sufficiently different to cause some variation between the results obtained. To his total costs of reproduction new found upon the 1927 inventory, including general overheads, Henrici added, for additions and betterments, the total book figure of $128,041, which, however, did not include the "new stock viaduct." He also included in his appraisal (Government Exhibit 114) a detailed list of the items composing the total of $128,041. Kosters scattered the value of the additions and betterments throughout his appraisal (Respondent's Exhibits 111 and 111a), including each item with the unit of property to which it belonged. The fact that the original inventories were as of different dates precludes any detailed comparison to determine whether every item included by one engineer also appears in the inventory of the other. Henrici's failure to include the "new stock viaduct" or its value was due to the fact that, though erected prior to August 1, 1932, its cost did not, at that time, appear on respondent's books and Henrici feared that in the event of revising the appraisal to some future date, duplications would result from not adhering to the "cut-off date." Kosters included the "new stock viaduct" at book value, namely, $18,610. Kosters' method of handling the additions and betterments has the effect of including them in the base for determining general overheads, while Henrici's method does not. Also, Kosters' method slightly increases [fol. 114] the composite condition per cent for determining the depreciated cost of general overheads over the figure arrived at by following Henrici's method, but Kosters depreciates the additions and betterments and Henrici does not. Moreover, Henrici computed what he called "con-

struction overheads," (Kosters designated them "miscellaneous structural costs,") applicable to each item of the property and, as the appraisal progressed, added them to the labor and material costs of such item. Kosters omitted them from the individual items, but added them in lump sum as one of the overheads. All of this renders impracticable, if not impossible, any mathematical comparison of the two appraisals, in detail. However, the two engineers compared the results and reached the conclusion that they were in substantial agreement, both as to cost of reproduction new of labor and materials and as to the total cost of reproduction new, including general overheads. The first figures they reached were what they designated "total cost of materials and labor as of August 1, 1932, without any overheads, either construction or general," and were as follows:

Henrici's appraisal	$2,051,681
Kosters' appraisal	2,200,302

The first figure was found as follows:

From the figure "Total before General Overheads (Revised Appraisal 1927, with betterments)" appearing in Henrici's appraisal (Gov. Ex. 114) and amounting to	$2,209,458
There was deducted the aggregate of the "construction overheads"	285,818
Leaving	$1,923,640
To which was added Additions and Betterments 1927 to 1932	128,041
Making a total of	$2,051,681

[fol. 115] The second figure is Kosters' "Total Material and Labor" (Resp. Ex. 111, p. 5) and was made up as follows:

Material and labor cost of reproduction new as of Kosters' total 1929 inventory	$2,139,582
To which was added Kosters' additions and Betterments 1929 to 1932	60,720
Making a total of	$2,200,302

They, therefore, found themselves $148,621 apart at this point. The difference, they said, was 7.24 per cent. of Henrici's total and 6.75 per cent of Kosters' total and was "made up of a multitude of differences in inventory and appraisal," the reason for which it might take them several months to determine. But Kosters' figure of $2,200,302 includes the "new stock viaduct" (or "Illinois and Packers Avenue Viaduct") at a book cost of $18,610, while Henrici's $2,051,681 does not. Adding this to Henrici's figure we have, for comparison:

Henrici's appraisal	$2,070,291
Kosters' appraisal	2,200,302
A difference of	$130,011

The engineers continued their comparisons to include the various overheads of all kinds which each included in his appraisal under whatsoever name. The resultant figures were:

Henrici's appraisal	$2,811,037
Kosters' appraisal	3,066,672

Of these they said:

The difference in the cost of reproduction new of the property, as determined by the respective appraisals is $255,635. The difference is 9.09 per cent of the U. S. appraisal and 8.34 per cent of the Stone and Webster appraisal. These are again in substantial agreement.
[fol. 116] Again adding the "new stock viaduct" $18,610 to Henrici's figure reduces the difference to $237,025. The result is that, as to the cost of reproduction new of structural property, neither engineer attributes error to the other. The Secretary is, therefore, to this extent, in the position of having a choice between two appraisals neither of which is erroneous. Respondent urges that, in such circumstances, the only fair course is to adopt a mean between the two. In this, however, it overlooks the impracticability of such a course in view of the necessity of the elimination of the value of non-useful property and of the other adjustments incident thereto. For convenience in such eliminations, Henrici's estimate, which lends itself more readily thereto, is used.

126. Inasmuch as the additions and betterments, including the "newstock viaduct" are to be included at actual cost undepreciated, and they occurred during the period 1927 to 1932, which is the period from which respondent's reasonable operating expenses chiefly are determined, it follows that all overheads applicable to the additions and betterments either have been included in the additions and betterments, as shown on respondent's books, or else have been left in the general operating expenses. In either event such overheads will be included in the final determination herein of reasonable rates. Moreover, it is impracticable to segregate the overheads which are buried in the book figures of additions and betterments and find the actual cost of the labor and materials therein. For these reasons, there are omitted from the separate finding of cost of reproduction new of labor and materials the cost of such of those items as are contained in the additions and betterments. The remaining labor and material costs, after making the eliminations necessitated by the exclusion of non-useful property, [fol. 117] are found to have a cost of reproduction new of $2,022,554, according to the following table:

Cost of Reproduction New as of August 1, 1932, of Labor and Materials, Including Construction Overheads, of Structures Inventoried as of 1927.

Item	Total 1927 inventory	Non-used and useful property eliminated	Used and useful property included in rate base
Exchange building area	$373,296		$373,296
Cattle division	621,274		621,274
Sheep division	125,731		125,731
Hog division	431,053		431,053
South of hog division	59,982		59,982
Southern cattle division	41,696		41,696
Company stable area	13,727		13,727
Horse and Mule division	142,295	$1,025	141,270
General items	32,567	9,376	23,191
Miscellaneous items	367,837	176,503	191,334
	$2,209,458	$186,904	$2,022,554

The following table shows in detail the items composing the above eliminations of $136,904:

Item	Elimination		Amount
Horse and mule division...	Blacksmith shop.....		$1,025
General items.....	Part of foot subway not on respondent's land.....		9,376
Miscellaneous items.....	Brick garage on railway	$3,550	
	Exchange avenue paving	1,144	
	Lake road paving	9,158	
	Transit House hotel	132,726	
	Harness shop	11,932	
	Journal building	17,993	
			176,503
Total.....			$186,904

General Overheads

127. In order to arrive at the cost of reproduction new of respondent's property, it is necessary to add certain general overhead costs to the cost of material and labor above found. These usually are arrived at by the calculation of [fol. 118] percentages of certain other costs. The item which customarily is considered as the first general overhead is the so-called "Omissions and contingencies." This is, however, not a true general overhead but rather a margin to take care of unavoidable errors which creep into the complicated processes of appraisal and to cover contingencies which may arise in the reproduction of a complex property, and which have not been anticipated by the appraisal engineer. In this proceeding both engineers recommended that this item be computed as 5% of the cost of reproduction new of materials and labor and each so calculated it in the appraisal which he prepared. A difference in the set-up of those appraisals respectively brought about in actual practice a difference in principle in the computation of the omissions and contingencies item. Because Henrici integrated his construction overheads with other costs of materials and labor as he built up his appraisal, he calculated the omissions and contingencies as 5% of a total, which was $285,818.00 greater than the base which he would have used had he employed Kosters' method, and Kosters computed this item upon a base which was about $288,000 less than the base he would have used had he employed Henrici's method. Use of the method employed by Henrici increases the amount of the allowance for omissions and con-

tingencies and, therefore, of the cost found for the reproduction of the structures. Inasmuch as the item is of a kind which must be computed arbitrarily, there is no particular reason for following either of the methods above discussed, in preference to the other. However, since, for purposes of convenience, Henrici's appraisal of the cost of labor and materials has been adopted, his method of computing omissions and contingencies also is accepted. There- [fol. 119] fore, it is found that, in determining the cost of reproduction new of respondent's structural property, there should be included an item of $101,128 to cover omissions and contingencies. This item is 5 per cent of the $2,022,554 heretofore found to be the cost of reproduction new of labor and materials, including construction overheads, of respondent's used and useful structures. This item for omissions and contingencies is added to the amount last above mentioned to form a new base of $2,123,682 upon which are calculated certain of the general overheads hereinafter discussed.

128. The engineers were in agreement that in the determination of cost of reproduction new there should be included items to cover general salaries and expenses, legal expenses, and the services of architects and engineers; and that these allowances should be computed as 2 per cent, 1 per cent and 5 per cent, respectively, or a total of 8 per cent. But it is not clear whether the respective engineers computed them upon bases arrived at in the same manner or even recommended that they be so computed. They are here calculated upon the base of $2,123,682 last above mentioned, resulting in the following amounts to be included in the cost of reproduction new:

General salaries and expenses	$42,474
Legal expenses	21,237
Architects and engineers	106,184
Total	$169,895

129. In respect to the general overhead which is designated by Kosters as "Workmen's Compensation and Public Liability Insurance," and by Henrici as "Liability Insurance," the former would calculate it, when applied to the entire structural property, as 5.9% of labor amounting to [fol. 120] $709,300, or $41,849, whereas the latter would

compute it as 6.1% of his labor cost of $836,305 or $51,015.00. This difference in the base used is explained by the difference of method employed in handling construction overheads, but the difference in percentage is unaccounted for. Inasmuch as other aspects of Henrici's appraisal have been adopted, the same course is followed in respect to this item and the amount of $46,485 which is found to be properly includable in the cost of reproduction new of respondent's property to cover the item of liability insurance, is arrived at by computing 6.1% of Henrici's labor cost of reproducing the used and useful structures, namely, $762,048.00.

130. Both engineers used one-half of one per cent as the rate at which to calculate the allowance to be included in cost of reproduction new to cover the item which was designated by Kosters "Fire and Tornado Insurance" and by Henrici "Fire Insurance," but the respective bases to which they applied this percentage were not arrived at in the same manner. The employment of Kosters' method would result in a finding of $11,002.00 to cover this item if all structures were regarded as used and useful. On the same hypothesis, the use of Henrici's method would result in a finding of $11,600.00. Henrici's method is here employed and, when applied to the used and useful property, results in the finding that there be included in the cost of reproduction new of respondent's property an item of $10,618 to cover fire and tornado insurance. This item is one-half of one per cent of $2,123,682.00.

131. The item of taxes during the period required to reproduce the structures (which both engineers agreed would be one year) was arrived at quite differently by them. Henrici used the amount actually paid by respondent on its land as well as its structural property. [fol. 121] Kosters calculated the taxes by applying the tax rate to the cost of material and labor. He did not take the taxes actually paid but took the tax rate which was in existence at the time of appraisal. He did not include the taxes on land, but only on structural property. That was because he did not have the land figures. He then broke down the labor and material items, including miscellaneous structural costs, into the classification of rural property and city property, finding the former to be $2,275,874.00 and the latter to be $385,967.00. To the former he

applied one per cent and to the latter 1.8 per cent, and, adding the two results, arrived at $30,846.00 as taxes during construction on all of respondent's structural property. The fault in Kosters' method lies in that it is based on a presumption that respondent would be required to pay, during the construction period, taxes computed by applying a tax rate to Kosters' estimate of the cost of labor and materials including miscellaneous construction costs. This presumption is contrary to the proven fact that, with its property fully constructed and operating, it pays no such tax but one based on a tax appraisal materially less than the above described estimate of Kosters. Henrici's method is in accord with the actual facts and is, therefore, followed in arriving at the item of taxes during construction on the used and useful structures and land. The amount thereof is found to be $18,257.00.

132. At the first and second hearings, engineering witnesses were in agreement that the item of interest during construction should be computed at the rate of 7% per annum for one half of the construction period. At the first hearing, Henrici did not include in the base for calculation of interest during construction any land value. The record at that hearing is not clear as to whether this [fol. 122] was because he did not believe it should be included or only because he did not have the land value to include. It is clear that respondent's engineer considered that the land value should be included in such a base. The order issued as a result of that hearing agreed in principle with respondent's engineer. At the second hearing, both engineers were in agreement that the land value should be included in the base on which interest during construction is calculated, Henrici saying that the reason it was not so included in his appraisal was because he did not have the land value at the time of making up the appraisal. While it is true that interest on land during construction is not an element properly to be added to the present market value of the land on which the structures rest, it is a necessary and inescapable cost of reproduction new of those structures. They cannot be built and then moved to the land they are to occupy. The land must be in possession when the construction is started, which means that money must have been invested in it or a liability

for interest payment incurred. It would be exceedingly unwise to attempt to purchase the land in parcels as construction progresses. In this respect the land differs from materials and labor. Therefore, while interest on the latter is allowed for only one-half of the construction period, on the former it is included for the entire period. This does not mean, however, that interest on all land found to be used and useful is so included. It has reference merely to the land necessary for the construction of the structures. The record in this case indicated that ownership of all lands in Zones 1, 2 and 3 and in Zones A and B, except possibly portions of the feedlots in the latter two zones, would be a prerequisite to the program of reconstruction of the used and useful structures. The record is not [fol. 123] sufficiently definite to warrant the exclusion of any particular part of the feedlots in Zones A and B, or in Zone C. With respect to Zone E, however, there are no buildings upon it and it is clear that its acquisition would be in no way necessary to the beginning or prosecution of a construction program. It is found that there is properly includable in the cost of reproduction new of respondent's structures on item of $125,106 to cover interest during construction. This amount is ascertained by computing interest for six months at the rate of 7 per cent per annum on the $2,368,937 heretofore found to constitute the cost of reproduction new of labor and materials, and all overheads, construction and general, except interest during construction, of respondent's used and useful structures, and interest for one year at 7 per cent per annum on $602,755 being the value of the used and useful land exclusive of Zone E.

133. In addition to the overheads above considered Burnell, an engineering witness for respondent at the first hearing, recommended the allowance of two so-called preconstruction overheads which he designated "Organization" and "Cost of Financing," respectively. At the second hearing, Kosters recommended the allowance of two general overheads designated by these terms. Henrici was of opinion that neither of these so-called overheads should be included.

134. Burnell's organization overhead was practically the cost of persuading oneself that one desired to own a stockyard. Kosters' conception of this item is the cost of obtaining from experts an opinion as to the best site to be purchased and the best layout of structures thereon, together with the cost of consideration of such recommendations and the reaching of a decision by respondent's management. At this time, respondent appears to contend for the inclusion [fol. 124] of the so-called organization overhead on the basis recommended by Kosters rather than that suggested by Burnell. Accordingly, it is so considered. Kosters' view would seem to arise from a confusion of the theory of valuation on the basis of historical costs or prudent investment with that based on cost of reproduction new. It is conceivable that, if, without definite historic data, one were attempting to surmise historical costs or original prudent investment, one might suppose that in the beginning, when there was no stockyard in existence, the promoters thereof would have employed experts to advise them and would have devoted time and research to the determination of the best site and the best plan of structures. But Indianapolis Water Company v. McCardle, 272 U. S. 400, makes clear that in ascertaining cost of reproduction new, the exact existent property must be reproduced, notwithstanding that a better property, from an operating standpoint, could be produced at less cost. Being, therefore, bound to reproduce the identical structures upon their exact site it is of no avail to employ in its reproduction experts to advise as to other sites or other plans of construction, or for management to give consideration to those matters. Moreover, there is no evidence that such costs were ever incurred. Also Kosters was of opinion that the site of the stockyard is the best that could be selected in St. Joseph or its vicinity and that if the ideal stockyard were ever constructed it would be built exactly as is respondent's. For these reasons and others which suggest themselves from the record it is found that the so-called organization costs are not properly includable, either as a cost of reproduction new of the structures or as a part of the rate base on any other ground.

135. Both Burnell's and Kosters' costs of financing seem [fol. 125] to have been based on the thought that in the sell-

ing of respondent's securities, from the sale of which money was obtained wherewith to buy land and build structures, brokerage fees or equivalent expenses would be incurred. While there is some evidence of a refunding issue of respondent's bonds having been sold at a discount, there is none as to brokerage actually having been paid in the sale of its securities or of the original issues of its securities having been sold at a discount. Whether or not this so-called cost should be included in the rate base, it is clear that the actual cost of reproduction of a property is in no wise changed by the amount of expense incurred in obtaining the money wherewith to pay for such reconstruction and that, therefore, such expense is in no sense a reproduction cost. Neither should it be included in the rate base at all. The law guarantees to the present owners of the property a fair return on the fair value of that property wholly regardless of the cost to them of acquiring it. This is illustrated in this order by the fact that, though in the acquisition of the so-called new stock viaduct, respondent paid only one-third of its cost, it is included in the rate base at its entire cost. If, therefore, in order to acquire the property as a whole, the owners of the respondent corporation had to contribute more money than was actually invested in the property, in order that a portion of that money might be used to pay brokerage fees or commissions, it does not entitle them to have such excess included in the computation of the fair value of the property. For these and other reasons apparent from the record it is found that there should not be included in the rate base any allowance to cover the so-called cost of financing, whether that cost be conceived to be a fee for brokerage, a discount allowed in the sale of securities, or a composite of the two.

[fol. 126] 136. A summary of the cost of reproduction new of respondent's structures is as follows:

Cost of reproduction new of Materials and Labor, including construction overheads but not additions and betterments or new stock viaduct	$2,022,554
Omissions and contingencies	101,128
Sub-total to be used as base for calculation of the following overheads	$2,123,682

General salaries and expenses 2%		42,474
Legal expenses 1%		21,237
Architects and engineers 5%		106,184
Fire and Tornado insurance ½%		10,618
		$2,304,195
Workmen's Compensation and public liability insurance 6.1% of labor amounting to $762,048		46,485
Taxes during construction, on the basis of amounts actually paid on existing property for one year		18,257
Sub-total to be used as base for calculation of interest during construction		$2,368,937
Interest during construction		125,106
Total material and labor and overheads on 1927 inventory		$2,494,043
Additions and betterments 1927-1932	$124,533	
New stock viaduct	18,610	
Total additions and betterments		143,143
Total cost of reproduction new of respondent's used and useful property as of August 1, 1934		$2,637,186

[fol. 127] Cost of Reproduction New Less Depreciation

137. Having determined the cost of reproduction new of the various units of used and useful structures, the most usual method of ascertaining the cost of reproduction new, less depreciation, is to find the per cent condition of each unit and multiply its cost of reproduction new by such percentage. There is, however, another method, in which the cost of reproduction new, less depreciation, is procured by deducting from the cost of reproduction new of each unit a sum of money composed of (1) the estimated cost of replacing such parts of the unit as should be replaced, and (2) an estimate in money of the accrued depreciation in those parts of the structure which, though not sufficiently worn to warrant replacement, do not wear.

138. The two methods are not distinct, but each involves some elements, at least, of the other. They seem but slightly different methods of arriving at the same determination, namely, the proportion of the property which remains sound. At the first hearing, both Henrici and Kosters used the method first described above. A consulting engineer called by respondent employed and recommended the second. On most of the used and useful structures Henrici and Kosters found so little difference in their estimates of per cent conditions that, by a stipulation between them, they recommended the acceptance of the mean between their respective percentages.

139. The items of property concerning which the engineers were closely in agreement as to the per cent condition related largely to the pen areas then in active use. The record shows that, as to this property, both engineers pursued the same method. That is to say, both used the inspection method, which takes into account the age of structures only as such age is indicated by present condi- [fol. 128] tion, and both depreciated each structure as a whole rather than by parts and then aggregated to find a composite for the structures. Kosters' reason for following, with respect to the pen areas, the same method as Henrici was because in an attempt to make his inventory exactly comparable with that of Henrici he had set the elements of property up in the same units. To illustrate, he did not inventory posts and boards in a fence separately but ascertained the number of lineal feet in pen fences and in his appraisal found and applied the cost per lineal foot to arrive at the cost of reproduction new. Consequently, when he came to compute accrued depreciation, he was compelled to consider the fence as a unit, and could not separate the condition of the boards from that of the posts. This led him into harmony with Henrici's method. Kosters did not, however, inventory such important units as the Exchange Building, the foot subway, and so forth, in the same manner as he did the pen area and, therefore, was able to apply to them his method of depreciating a building by parts and then aggregating to find the condition as a whole. This led to such a divergence between the respective percentages which he and Henrici found for those structures that they agreed to designate their views as "irreconcilable." In respect to those structures, Henrici

and Kosters made equally detailed inspection, but Henrici was of opinion that deterioration found to exist in various parts of a building tended to depreciate the value of those parts in which no actual deterioration was discoverable. He, also, was of opinion that the observed degree of obsolescence and inadequacy in those parts in which either or both existed depreciated every part of the building. Henrici effectuated these opinions in arriving at his estimate of accrued depreciation or the so-called condition per cent. [fol. 129] Kosters, on the contrary, held the view that deterioration in one part of a building does not affect the value of another part in which no deterioration is found. Consequently, he would, for example, find undeteriorated flooring to have a condition per cent of 100 notwithstanding that the joists which supported it were deteriorated. Moreover, he was of opinion that obsolescence did not exist in a building until it had ripened into the building becoming obsolete and that there was no growing element of inadequacy but that a building would be entirely adequate until it became entirely inadequate. These principles he effectuated in his determination of condition per cent in respect to those items designated "irreconcilable." The fact that where Henrici and Kosters employed the same method there was no substantial difference between them and where they used a different method their results were "irreconcilable" point to the fact that the irreconcilable differences were due to method employed rather than the personal element. This indication is strengthened by the circumstances that when Kosters applied to the southern cattle division a method different from the one he employed in the actively used pen areas he and Henrici arrived respectively at conclusions which were "irreconcilable."

140. When Henrici and Kosters determined that they could not agree upon the condition per cent of certain structures, Henrici had two of his assistants make independent estimates. Those estimates he compared with the one originally made and, as to each structure, he recommended the highest figure.

141. At the second hearing there was no agreement or stipulation between the engineers with respect to accrued depreciation. Henrici used exactly the same method he had employed at the first hearing, with the exception that he

had independent estimates made by each of five of his as-
[fol. 130] sistant engineers and he adopted, as to each item of property, the average of the five estimates. Kosters changed his method to whatever degree was necessary to make it conform to that which had been recommended and employed by the consulting engineer at the first hearing. That is to say, he continued to compute depreciation for a building as a whole by merely aggregating the observed deterioration for those parts where he found it to exist, saying that if he found the wallpaper undeteriorated he would regard it as undepreciated notwithstanding that the plaster to which it was attached had deteriorated. He conceded, however, that, if in his opinion it was necessary to destroy the wallpaper in order to repair the plaster, he would give consideration to that. But, instead of setting up the observed conditions of the various parts of the building as percentages of the cost of reproduction new of those parts and aggregating to find the cost of reproduction new less depreciation for the building as a whole, he expressed his estimate of the discovered deterioration in terms of what he thought it would cost to restore the part to as good condition as when new. However, in case the parts were of a nature which could not be restored by repair and had not worn sufficiently to warrant replacement, then he used an estimate in money of the portion which had worn away. Those amounts he aggregated into a whole which he deducted from the cost of reproduction new to find the cost of reproduction new less depreciation. There is, therefore, no substantial difference between the method employed by Kosters at the first hearing and that used by him at the second. The questions for decision in respect to this matter are (1) whether deterioration in parts of a building depreciate the value only of those parts or of the building as a whole; (2) whether obsolescence should be considered; and (3) whether inadequacy should be considered.

[fol. 131] 142. With respect to the first question it is found that deterioration in parts of a structure tend to depreciate the structure as a whole. For example, though the brick in the walls may not have deteriorated in the least yet if other parts of the building have reached a condition rendering it advisable to raze the whole structure, the undeteriorated brick become merely used or recleaned brick having a market value much less than when new.

This equally is true in principle though the building has not reached that state of deterioration which warrants its destruction. The more or less constant deterioration of the various parts of the structure is bringing the whole day by day nearer to its inevitable end.

143. Kosters' testimony shows clearly that he made no distinction between the condition known as obsolescence and that called obsolete. He seemed to think that a building, for example, did not become obsolete as the result of progress thereto over a period of time, but rather by some improvement in the building art which rendered the old structure no longer desirable. The facts of record, however, indicate that such is not the case with respect to property as complex as stockyard buildings and structures. There is a showing of relatively constant replacement of parts here and there to keep the structures up to the modern requirements of the business. Many of these replacements are not caused by deterioration of the unit replaced, but by the fact that new requirements demand a somewhat different type of unit.

144. Much the same is true of the element of inadequacy. While, of course, a building is not replaced because of inadequacy until it becomes inadequate, nevertheless ordinarily it does not become so overnight, but as a result of a gradual process of growth of the business. However, [fol. 132] neither the element of obsolescence nor that of inadequacy is nearly so active in respect to stockyard structures, particularly buildings, as it is with respect to many other types of business properties. This is due in part to the absence of competition and to the fact that stockyard buildings usually may be expanded by annexes without necessitating the retirement of other costly structures.

145. Weighing these things and all the facts of record bearing on the matter of accrued depreciation, it is found that the method employed by Henrici for depreciation is more nearly in accord with actual experience. It, therefore, is here adopted, and it is found that the per cent condition of the labor and materials of respondent's is used and useful structures is 76.04 and the cost of reproduction new less depreciation thereof is $1,537,953.

Depreciation of General Overheads

146. At the first hearing Kosters was of opinion that the general overheads during construction depreciated. The view of Burnell and Henrici was that they do not. The opinion of each of them seemed inconsistent with his method of ascertaining accrued depreciation and the resultant condition per cent of the property. At the second hearing Henrici actually depreciated general overheads in order to arrive at his estimate of cost of reproduction new less depreciation, and Kosters did not.

147. Undeniably, these overheads suffer no process of gradual wear and tear, rust, rot and decay, but, like brick in the walls, which may go on unimpaired to the end of the life of the building, value goes out of these overheads when the structures come to the end of their usefulness. To the extent that the factors of depreciation have brought upon the structures a composite percentage of lessening in value, [fol. 133] these overheads have depreciated. It is true that when the structures have reached the end of their useful life there remains a sort of "scrap value" in these overheads, in that possibly the architect's plans, or part of them, could be used in the reconstruction, but the fact of retention of such value does not alter the conclusion that these overheads partake of the composite depreciation of the structures to which they relate. Therefore, it is found that these overheads, amounting to $471,489 have a condition per cent of 76.04 and there is included in the cost of reproduction new less depreciation of respondent's used and useful structures $358,520 to cover these items.

148. Based on the 1927 inventory, it is found that (1) the cost of reproduction new of all of respondent's structures hereinbefore found to be used and useful is $2,494,043 and that (2) the cost of reproduction new, less depreciation of those structures is $1,896,473. In order to find the cost of reproduction new and cost of reproduction new, less depreciation, respectively of respondent's used and useful structures as of August 1, 1932, there is added to each of the foregoing figures the actual cost, as shown on respondent's books, of additions and betterments, including "new stock viaduct," made to the used and useful structures during the period 1927 to 1932. The amount so added is $143,-

143 and it is found that (1) the cost of reproduction new of respondent's used and useful structural property as of August 1, 1932, is $2,637,186 and that (2) the cost of reproduction new, less depreciation, of said property as of that date is $2,039,616, according to the following table:

		Cost of reproduction new	Cost of reproduction new, less depreciation
[fol. 134] Structural property existant as of August 1, 1927		$2,494,043	$1,896,473
Additions and Betterments August 1, 1927 to August 1, 1932	$124,533		
New Stock Viaduct	18,610		
		143,143	143,143
		$2,637,186	$2,039,616

VI

Working Capital

149. Working capital is ready money with which a business meets those of its current cash expenses which have not as yet produced cash revenues. The amount of such capital needful in a particular business is dependent upon the lag in time between such expenditures and the recouping of them. In the case of expenditures on account of some stockyard services collections are made from shippers before the employees who render the service receive their salaries or wages. For instance, yardage is collected daily, yet the yard payroll is on a weekly basis. In the case of other functions, however, the respondent makes short-time advances, as when it buys, stores and pays for hay and grain which it sells later. In meeting such obligations as these, working capital is needed.

150. The accountant called by the Government gave it as his estimate that $10,000 in cash for payroll purposes, $29,275 for inventory purposes, and $12,000 for miscel- [fol. 135] laneous cash purposes, $51,275 in all, would constitute a revolving fund large enough to enable the respondent to meet promptly all its current cash requiring bills. He

recommended that $52,000 be included in the rate base on account of working capital.

151. The accountant of the respondent gave it as his opinion that a minimum of $125,000 should be included in the rate base for this purpose. In substantiation of this estimate, he set forth an itemized tabulation of the amounts necessary. An analysis of these items shows that many of them arose not on account of cash expenditure but from the use of facilities already included in the rate base. Some of these related to outside activities of the respondent, such as loans, and some to interest payment, and bond retirement. He included also $25,000 to take care of operating contingencies. Contingencies of this character are not continuously cash requiring and are hereafter provided for in a rate of return sufficient to enable the respondent to accumulate an adequate surplus, which may be drawn upon.

152. Giving due weight to the fact that, in the main, the collections of the respondent are on a daily basis, the amount necessary on of feed inventory, and to all the facts of record, it is found that $55,000 should be carried into the rate base of this account.

VII

Going Concern Value

153. Respondent contends that in addition to any and all other values which may be included in the ascertainment of fair value, and the rate base, it is entitled to have allowed and included an item to cover so-called going concern value. In so far as the amount contended for can be determined [fol. 136] from the rather indefinite evidence, it lies between a minimum of $294,000 and a maximum of $1,125,000, depending upon the value found for respondent's physical plant, the fair rate of return found, and the amount allowed for depreciation reserve. Respondent's claim in this respect is based entirely upon the testimony of the witness Howson, an engineer who made at both the first and second hearings an elaborate mathematical computation in an effort to show the amount of this so-called value; and upon the testimony at the first hearing of three of respondent's officers, who, together with four commission men doing business on the St. Joseph Stock Yards, gave to Howson the speculations upon which he based his elaborate computations for the

first hearing. At the second hearing similar computations were based on information supplied by two of respondent's officers and five commission men, none of whom testified thereat. The Government offered no evidence on this matter, except in rebuttal to show the feasibility of operating a stockyard during the period of construction and of caring for the business by temporary arrangements during such period.

154. At the second hearing the Government offered no evidence on this point, except to show that if respondent ceased to be a going concern its structural property would be practically valueless, due to the fact that the cost of wrecking would equal or exceed the scrap value; that the cost of reproduction new of respondent's structures in some place where a going business could never be developed would probably exceed the cost of reproduction new estimated by the appraisal engineers; and that conditions which might be expected to render the stockyard no longer a going concern would greatly depreciate the value of respondent's land.

155. Howson's computation produced at the first hearing [fol. 137] an amount of $666,666 as the going concern value of respondent's business. At the second hearing he followed the same method in making his computation, but arrived at the conclusions that, if the total valuation of respondent's property were $5,000,000, the going concern value would be $294,000, while, if the total value were $3,850,000, the going concern value would be $358,000; that if the physical reproduction were made at the cost of $5,000,000 as being the average for the period of 1927 to 1932, both inclusive, and respondent's average business and income for the same period were used, the going concern value would be $472,644; that if the computation were based on a business and income adequate to yield 7½ per cent return plus 4 per cent for depreciation reserve, upon whatever value might be found, the going concern value would be approximately 22½ per cent of the physical plant value; and that if the computations were based on a business and income adequate to yield a total of 10 per cent return and depreciation reserve upon whatever value may be found, the going concern value would be 19 per cent of the physical plant value.

156. The method recommended by the witness Howson, and which he called the Alvord or comparative method, is an attempt to estimate the cost of reproducing the business which respondent now enjoys by assuming that some person or persons, desirous of operating a stockyard at St. Joseph, Missouri, found themselves in the peculiar position whereby they could purchase respondent's property and business as a going operating concern or could construct exactly similar property and, if they decide upon the latter course, then respondent immediately would cease to operate its business. The witness Howson adopts the one-year construction period used by the valuation engineers as the basis for their calculation of certain overheads, such as interest [fol. 138] during construction, and assumes that during that year all the business theretofore enjoyed by respondent would be dissipated. At the first hearing he aggregated the present worth of these supposed deficits into a total of approximately $667,000, and at the second hearing into various amounts, and then set out to determine what it would cost the new concern to attach to its new stockyard the amount of business, and its resultant income, which respondent now enjoys. To do this, he seeks to ascertain the period of time which would elapse after the new yard began operations and before its receipts of livestock and resultant income, would be equal to those now possessed by respondent. He also seeks to ascertain what percentage of respondent's present receipts of livestock would be recovered by the new yard during each year of the aforesaid period of recovery. He assumes that the expenses of the new company during each of those years would be the same as those of respondent during the test year in this proceeding, namely, 1928, at the first hearing and various years at the second, and, deducting from such expenses the income expected to be derived from the imagined receipts of livestock, ascertains the possible deficit during each of the recovery years. He says that whether the new company built its own new yard at the cost of reproduction new or purchased the existing yard as a going concern, the ultimate cost of the new company would be exactly the same. Wherefore, he drew the conclusion that, at the first hearing $667,000, and at the second hearing various amounts, represented the fair value of the element of going concern in respondent's business.

157. In Valuation Docket 785, the St. Joseph Belt Railway, the Interstate Commerce Commission, addressing itself to this identical method, testified to by the same witness, said:

"The analysis of the witness is so replete with assump-
[fol. 139] tions and estimates as to render it worthless for all practical purposes. The whole method consists of a presentation in new form of an estimate of deficiency below a fair return which the carrier, if reproduced on valuation date, would suffer before it attained the status of a financially successful concern. The theory that the total amount by which the carrier's actual income during its early years fails to yield a fair return on the investment should be added as an element of value for rate making purposes was condemned by the Supreme Court in Galveston Electric Company v. Galveston, 258 U. S. 388. By the stronger reason, hypothetical deficiencies must also be rejected."

158. Respondent contends, however, that the witness Howson's method of estimating going concern value is no more speculative than that of the valuation engineers as to cost of reproduction new. Without analysis of the witness' elaborate procedure, this may appear to be true. But, the difference lies in this, that the quantities of material necessary to reproduce physical structures can be ascertained by the engineering processes of measurement and computation with reasonable mathematical certainty and almost wholly devoid of the elements of guess and speculation. The present prices and costs of those materials delivered at the job can be found with approximately equal certainty; the present prices of union labor can be determined from lists maintained by the local unions; the amount of labor probably to be required can be estimated from a wealth of experience of the particular valuation engineer and many others of his profession with respect to thousands of structures theretofore built, as can also the period of time required for the reconstruction and the amounts of the overheads which probably will be incurred. On the other hand, the witness Howson, while likening this estimate of the recovery of receipts to an engineer's estimate of the cost of constructing a physical property and saying [fol. 140] that one is not more difficult or speculative than the other, admitted that in the case of estimates of recon-

struction of physical property the engineer has the benefit of past experience whereas he had no such similar guiding star with respect to the recovery of stockyard receipts and had never gone through a stockyards business reconstruction, nor had anyone else to his knowledge. Lacking this experience and its resultant knowledge, he sought from the respondent's officers and the commission men above mentioned the required information as to the length of the recovery period and the rate of recovery of receipts of livestock during such period. Both he and they, in so far as they testified, admit that none of them has ever had any experience with recovery of the receipts and income of a stockyard or any other business. They suggested periods of recovery the average of which was approximately eight years but he reduced it to five years and used that as his basic figure. They also suggested rates of recovery the average within the period, which formed the basis of the rates of recovery used by him. Obviously, this method is capable of expansion to produce any desired amount of going-concern value by merely increasing the imagined period of recovery or slowing up the supposed rate of recovery. Inasmuch as no one has had any experience from which to form any judgment or estimate, no one could say that a period shorter than that estimated or a higher rate would be correct. For these and other reasons, the method suggested by the witness Howson for measuring going concern value is not adopted. His speculations and those of the other witnesses upon which he bases his computations are in no real sense evidence.

159. That there is an element of value in an assembled and established plant doing business and earning money over one not thus advanced is recognized. Yet, the very [fol. 141] impossibility of finding any reasonable rule or measure wherewith to determine, for rate making purposes, the amount of such value, bespeaks the impropriety of attempting to include in rate making valuations any separate allowances for that purpose. The elaboration which Howson gives to his method does not disguise the fact that in the end it is but a guess. An arbitrary percentage of other values leads to the illogical conclusions that the more a property costs the greater is its going-concern value, even though it may not be earning any net return upon its cost of reproduction new. In actuality, going-concern value is

conceived to be the difference between the present fair value of the physical properties of a business, plus its working capital, and its actual net earnings capitalized at the going rate of money. The use of such a measure in rate proceedings would have the effect of destroying the result of the elaborate procedure which is undertaken to avoid using capitalized income as a basis for determination of the reasonableness of that income. This is why a separate allowance for the element of going concern has no place in valuation for rate making purposes. Attempts to substitute other methods have led to the confusing and illogical results which so generally characterize separate allowance to cover going-concern value.

160. Exclusion from the rate base of such separate allowance is not, however, tantamount to the failure to include therein anything for the going concern element. The very fact that the land used in the business has the value ascribed to it is because of its capacity for use as part of a going concern. The cost of reproduction new of structures is not necessarily value, but only such when and as it relates to property used as a part of a going concern. The record in this case shows that it would cost more to reproduce respondent's structures on a desert, without [fol. 142] means of transportation or livestock to market, but that, when so reproduced, they would be valueless. This is because it is the going concern element that transmutes cost of reproduction new into value. When respondent's structures are included in the rate base at the cost of reproduction new less depreciation, rather than scrap or junk value, it is because, and only because, they have inherent in them their use in a going, operating business. Thus, in the rate base herein found, there is included a large amount for going-concern value, but such value is so inextricably interwoven with other values that any attempt to segregate it and set it up alone would lead to a conclusion as arbitrary and illogical as usually is found when such attempts are made.

VIII

Conclusion as to Fair Value

161. Hereinbefore, the following values have been found for respondent's used and useful property and as necessary working capital, namely:

Land (Para. 121)	$647,547.84
Structures (Para. 148)	2,039,616.00
Working Capital (Para. 152)	55,000.00
Total	$2,742,163.84

Therefore, upon the basis of the foregoing, in connection with all the evidence, it is found that the fair value of respondent's used and useful property is $2,743,000.

[fol. 143]

IX

Fair Rate of Return

162. Respondent contended in the first hearing that, in calculating the reasonableness of its rates, there should be employed a rate of return of at least 11%. This is based on the hypothesis of a capital structure of one-fifth bonds, bearing an interest rate of 6%, and four-fifths common stock, paying dividends at the rate of 6%, leaving 5% to be added to surplus, and is supported in this contention by the opinion of a local investment banker who calculated a return, or company earnings, of 7.10% on the one-fifth represented by bonds and of 11% on the four-fifths represented by the common stock, making a total of 10.22% on the entire capitalization. This he regarded as the minimum fair return.

163. An economist of wide experience, who had devoted much study to the question, was of opinion that a return, or company earnings, of from 7½% to 8% would be sufficient to enable respondent's securities to occupy in the field of finance a position comparable to, that is, to be on a parity with, the securities of other sound public utilities and industrial corporations, so that investors seeking to invest their funds would regard respondent's securities in as favorable a light as those of any other sound corporation whose securities might be considered; that under all the circumstances, both financial and what he knew of the operations of respondent's stockyard, rates which at the time of the hearing would have brought in 7½%, and perhaps a little shade under that, would be as low as would maintain the securities equal to the value of the property on a parity with other securities, and if the rates produced

as much as 8%, they would be getting to the point where they might be so high as to impose excessive charges upon [fol. 144] respondent's patrons; that, if the value of the property be approximately equal to that of the outstanding securities, a rate of 7½% would be indicated; and that this rate, varying possibly from slightly below 7½% to 8%, is not the return in the form of dividends which respondent would pay to its security holders but is the return which it should earn in order that they might continue to receive interest and dividends.

164. It is obvious that in the above stated 7½% to 8% there was included an allowance for the payment of current interest and dividends on securities equal to the value of the property, and also a sufficient annual addition to surplus reasonably to insure the continuity of interest and dividends over future periods during which the stockyard's net operating income may be insufficient to pay interest and the adequate dividends.

165. At the second hearing the same two witnesses were called. The investment banker testified that he knew of nothing in the general economic situation which led him to believe that a reasonable return as of the date of the second hearing would be less than that testified to by him in the first, namely, 11%.

166. The economist, who had continued his investigation during the interval, was of the opinion that the year 1932 was subnormal in point of receipts by the respondent and subnormal as to earnings, and that a schedule of rates which would have produced a return of from 6% to 6½% under those conditions would not for that reason be unreasonably low. He testified further that if the six-year period from 1927 to 1932, inclusive, be considered, the reasonable rate of return to be used in arriving at reasonable rates should be between 6½% and 7½%.

167. Both witnesses were in agreement that as of the date of the second hearing the money market was demoralized and that it would have been practically impossible for [fol. 145] the respondent to raise at that time and on reasonable terms an amount of money equal approximately to the fair value of the property. The evidence is clear that at the time of the second hearing corporate earnings of all classes had declined, but that those of the respondent had

not suffered in as great a degree as most industrial and public utility enterprises. The property of the respondent was already built and there was no need for the company to raise an amount of money equal to its value. Moreover, prudent management would not have embarked upon the building of a stockyard such as that operated by the respondent at a time when the raising of the money to finance it would have been well nigh impossible. It would obviously be unfair to base a rate of return wholly upon the high cost of money then prevailing, and cover this cost into rates to be charged shippers of livestock in future periods when interest rates should have ceased to be panic rates.

168. The rates prescribed in the order issued as a result of the first hearing were based upon 7½% as a fair return as of that time, and upon the financial showing of the respondent during the year next preceding that of the hearing, a financial showing considerably better than for the period 1927 to 1932, inclusive. The rates hereafter prescribed in this order are based upon detailed studies of the financial operations of the business of the respondent during this six-year period, and upon a consideration of the history of the company and other facts with respect to it extending over a much longer period. The rates hereinafter prescribed are to be charged in future years. It is not to be expected that all the conditions prevailing or which have prevailed will continue precisely as they are or as they have been, and that rates calculated upon the basis of any given return will continue to produce year in and year out thereafter the exact rate used as a factor in calculating them.

[fol. 146] 169. Variations in conditions and the consequent variation in earnings and in the rate of return on the value of the property are necessary consequents of changing conditions. Such variation in return, however, as may take place does not render unreasonable the rates prescribed on the basis of that return. The return produced by the rates in any year may, due to unusual conditions, produce temporarily a rate above or below that used as a basis for calculating the rates. So long as this, however, is the result of unusual conditions, it cannot be attributable to the unreasonableness of the rates prescribed.

170. The period elapsing between the first and second hearing has been one of unprecedented economic disturb-

ance. What has taken place in this period gives little indication of what may be expected under a more normal situation. A schedule of rates based wholly upon a year of extreme prosperity immediately preceding the first hearing, or the extreme depression prevailing at the time of the second hearing, might easily prove to be inapplicable in a more normal period. Giving weight to the facts of record bearing upon the rate of return, the unusual conditions which have prevailed, and all other pertinent information, it is found that 7 per cent is the reasonable rate of return to be used in the determination of reasonable rates to be charged by the respondent.

X

Reasonable Net Operating Income

171. The reasonable net operating income to be produced by the rates prescribed herein is 7 per cent of $2,743,000 or $192,010.

[fol. 147]

XI

Reasonable Operating Expenses

172. In addition to producing a fair return on the fair value of respondent's used and useful property as shown above, a reasonable schedule of rates and charges should produce enough revenue to pay all reasonable stockyard operating expenses. The rates prescribed will apply to the future. As a guide to what may be expected, the Secretary caused to be made by an accountant for the Government a detailed audit and a minute analysis of the books and records of the respondent covering the six-year period from 1927 to 1932, inclusive. This audit contains a balance sheet showing the assets and liabilities as of the end of each year, an income account showing all revenues received from whatsoever source and all expenses incurred on whatever account during each of the years, and also a reconciliation of surplus as of the end of each of the years. In addition to making an audit of the respondent's business for the six years the accountant made a study into the history of the development of the yards and set forth in the record much collateral information bearing upon the financial operations of the stockyards since its establishment.

Repairs and Depreciation

173. The properties of the respondent are maintained by repairs but not in the same condition as when new. There is of necessity deterioration in physical property which cannot be made good through repairs. In order that there may not be an invisible wastage of assets something must be set aside in a depreciation reserve to offset this irreparable physical deterioration. The respondent [fol. 148] expended on account of repairs on its used and useful property from 1922 to 1932, inclusive, an average of approximately $38,500 annually.

174. In the year 1922 the American Appraisal Company appraised the property of the respondent and observed in it a depreciation amounting to $621,171. This depreciation had taken place despite repairs and retirements that had been made. In 1929, seven years later, two appraisals of the property were made, one by an engineer for the Government and the other by the engineer of the stockyard company. In 1932 again two appraisals were made by the same individuals. Henrici observed depreciation amounting to $641,464 in 1929 and $648,631 in 1932. Kosters in 1929 observed $535,907 depreciation and in 1932 only $337,437. The amount of depreciation observed by Henrici in 1929 was about $20,000 greater than that observed by the American Appraisal Company in 1922. A comparison of Henrici's observed depreciation in 1929 and 1932, respectively, shows a depreciation during the three years of approximately $7,000. A comparison of the depreciation observed by Kosters in 1929 with that observed by him in 1932 shows an appreciation during the three years of approximately $200,000. A comparison of the American Appraisal Company's observed depreciation in 1922 with that of Kosters observed in 1929 shows a betterment in condition of about $85,000 and a comparison of these observations as of 1922 and 1932 shows a betterment of $285,000.

175. In addition to the actual depreciation observed there must be taken into consideration retirements made from asset accounts of the company. The retirements made from 1916 to 1932 were $239,550, on all property whether used and useful or not. This is an average of about $15,000 a year. Included in the total retirements were about $25,000 on account of fire losses. If this amount and the retire-

[fol. 149] ment on property not used and useful be eliminated the average for the sixteen-year period is between $7,000 and $10,000. There is nothing in the record to indicate that the appreciation observed by Kosters can be accounted for by extraordinary additions and betterments. Respondent's property consists of buildings and a wide expanse of pens and alleys. The character of the pens and alleys is such that they can be maintained at a fairly uniform condition by adequate repairs. Repairs on respondent's buildings are not so effective in this respect..

176. The composite property to which this experience relates was constructed principally between the years 1897 and 1900. The experience, therefore, covers a period of 11 years as to repairs and observed depreciation and of 17 years as to retirements in the life of a property which, when the respective periods began, had already existed a sufficient length of time to cause it to have reached that condition of normal deterioration wherein ordinary repairs and replacements tend to keep its physical condition almost the same from year to year. This experience shows that during the 11-year period above mentioned the setting aside for maintenance of approximately $50,000 annually would have been sufficient to provide necessary repairs, reimburse respondent for property retired and offset that inevitable wastage of assets which could not be prevented by repairs and replacements. This, therefore, would indicate that $50,000 is a sufficient amount to be included in the annual expense to cover repairs and provision for depreciation reserve were it not that the periods of experience above described have not been sufficient in length to provide adequate tests as to certain structures which by reason of their nature may be expected to last considerably longer than the property in composite; and also were it not that [fol. 150] there is deterioration through obsolescence and changed conditions which reasonably is to be expected to occur but which presently is unobservable.

177. Considering that the factors of obsolescence and changed conditions are least active in their deteriorating effect upon the property; and that the lack of sufficient experience does not relate to the greater part of the value of the property; and, giving due weight to all the facts of record, including the opinions of the experts who testified, it is found that $80,000 is an adequate amount to be in-

cluded in respondent's annual expenses to cover repairs and provision for depreciation reserve.

Taxes

178. Another expense a reasonable amount for which must be covered into rates is that incurred on account of taxes. The total taxes of all classes paid by the respondent during the six years from 1927 to 1932 is as follows:

	State and county	Franchise	City	State income	Federal income
1932.....	$21,387.77	$1,928.47	$2,804.36	$1,667.90	$15,687.34
1931.....	23,945.48	1,977.88	3,138.32	1,667.90	26,933.93
1930.....	26,070.03	2,118.33	3,156.23	2,506.34	39,027.68
1929.....	28,388.26	2,546.52	3,157.85	2,474.19	39,146.28
1928.....	28,865.71	2,681.21	3,194.74	2,667.90	44,441.77
1927.....	29,430.44	2,850.95	6,031.26	2,232.10	42,381.16

179. The amounts given above include taxes on both used and useful, non-used and useful property and income taxes on stockyard income and income from other sources. The total amounts of annual taxes paid under each classification shows a decline during the last six years.

180. The detailed information with respect to taxes paid during the earlier years of the period is not such as to make an accurate segregation between the taxes paid on account of stockyard activities and non-stockyard activities. [fol. 151] The record does contain sufficient information to make such a segregat-on for city and county taxes during the year 1931 paid on real or personal property. In arriving at the allowance hereinafter made to cover taxes major consideration has been given to the experience of the respondent during the years 1931 and 1932. In computing the allowance for State, County and City taxes the average amount paid for the years 1931 and 1932 has been taken. From this there has been deducted the taxes allocable to non-used and useful property amounting to approximately $8,800. This computation results in a little less than $17,000. There has been included in the expense on account of taxes $17,000 for State, County and City taxes. During each of the years 1931 and 1932 the franchise tax paid by respondent was a little less than $2,000 and in 1930 a little over that amount. Two thousand dollars has been included on account of franchise tax. There has been included on account of State income tax $1,700, and on account of Federal income tax $23,067. The sum of the

allowances shown above is $43,767. This amount is deemed sufficient to pay State, County, City and franchise taxes, and State income and Federal income taxes based upon the income resulting from the rates hereinafter prescribed.

Other Expenses

181. The following table shows in detail for each of the six years covered by the audit hereinbefore described (1) all expenses actually incurred by respondent as shown on its books; (2) items of expense eliminated in whole or in part for the reasons hereinafter stated; and (3) the expenses which are considered in arriving at the finding hereinafter made as to the amount of annual expenses, other than the amount allowed for depreciation and repairs and taxes, used as a factor in arriving at the rates hereinafter prescribed.

(Here follows table, side folio 152)

[fol. 152]

	1932			1931			1930		
	(1) Expenses Per Books	(2) Expenses Eliminated	(3) Expenses Considered	(1) Expenses Per Books	(2) Expenses Eliminated	(3) Expenses Considered	(1) Expenses Per Books	(2) Expenses Eliminated	(3) Expenses Considered
Office and Management Payroll a/c	$ 23,528.68	.....	$ 23,528.68	$ 25,155.88	.....	$ 25,155.88	$ 21,359.20	.....	$ 21,359.20
Miscellaneous Adm. Expense	6,071.50	.....	6,071.50	6,425.82	$ 235.34	6,190.48	5,814.44	.....	5,814.44
Officers' Travel and Entertainment	681.27	.....	681.27	547.27	.....	547.27	471.12	.....	471.12
Legal and Collection	1,500.00	.....	1,500.00	1,608.95	.....	1,608.95	1,934.63	.....	1,934.63
Pensions	5,268.74	.....	5,268.74	2,525.00	.....	2,525.00	1,957.50	.....	1,957.50
Donations and Subscriptions	2,423.46	$ 1,360.56	1,062.90	2,595.11	1,321.70	1,273.41	2,437.20	$ 1,342.20	1,095.00
Taxes	43,475.84	43,475.84	.....	57,663.51	57,663.51	.....	72,878.61	72,878.61	.....
Depreciation	122,509.92	122,509.92	.....	123,066.12	123,066.12	.....	121,427.64	121,427.64	.....
Insurance	13,701.59	1,042.69	12,658.90	14,430.61	1,098.17	13,332.44	13,209.63	1,005.25	12,204.38
Valuation Bearing	3,082.54	.....	3,082.54	3,479.43	.....	3,479.43	3,986.79	.....	3,986.79
Bond Interest	46,014.02	46,014.02	.....	48,517.19	48,517.19	.....	15,277.80	15,277.80	.....
Bond Discount	4,855.83	4,855.83	.....	6,241.24	6,241.24	.....	2,904.35	2,904.35	.....
Office Rent	1,782.00	.....	1,782.00	1,782.00	.....	1,782.00	1,419.66	.....	1,419.66
Office Supplies	682.67	.....	682.67	709.88	.....	709.88	1,383.82	.....	1,383.82
Office Expense	120.24	.....	120.24	122.23	.....	122.23	128.60	.....	128.60
Office Postage	267.07	.....	267.07	242.62	.....	242.62	277.29	.....	277.29
Telephone and Telegraph	903.31	.....	903.31	692.82	.....	692.82	426.17	.....	426.17
Store House Expense	1,117.60	.....	1,117.60	1,232.72	.....	1,232.72	1,653.61	.....	1,653.61
Engineering	3.41	.....	3.41	6.83	.....	6.83	849.90	.....	849.90
Fiscal Agents, Registrars, etc.	308.12	250.30	57.82	314.06	253.13	60.93	1,403.64	1,403.64	.....
Yard Payrolls	119,956.40	.....	119,956.40	132,239.82	.....	132,239.82	137,133.42	.....	137,133.42
Yard Cleaning and Disinfecting	19,241.37	.....	19,241.37	20,123.07	.....	20,123.07	21,126.41	.....	21,126.41
Yard Current	3,749.71	.....	3,749.71	4,342.24	.....	4,342.24	3,942.05	.....	3,942.05
Yard Casualty Insurance	3,528.75	.....	3,528.75	4,147.50	.....	4,147.50	4,896.81	.....	4,896.81
Estrays	375.07	.....	375.07	852.50	.....	852.50	892.88	.....	892.88
Water, Electricity and Heat	13,164.98	.....	13,164.98	13,448.91	.....	13,448.91	13,410.55	.....	13,410.55
Company Barn	1,922.28	.....	1,922.28	1,891.79	.....	1,891.79	2,056.57	.....	2,056.57
Yard Truck	120.47	.....	120.47	247.33	.....	247.33	244.69	.....	244.69
Cost of Hog Pen Bedding	177.96	.....	177.96	187.21	.....	187.21	338.38	.....	338.38
Milling Feed Expense	1,749.70	.....	1,749.70	1,905.76	.....	1,905.76	1,801.62	.....	1,801.62
Grain Elevator	1,005.70	.....	1,005.70	1,073.95	.....	1,073.95	1,530.97	.....	1,530.97
Weighing	3,479.28	.....	3,479.28	3,812.83	.....	3,812.83	.....	.....	.....
Dipping	85.56	.....	85.56	42.05	.....	42.05	4.78	.....	4.78
Car Partitions, etc.	19.72	.....	19.72	253.29	.....	253.29	446.21	.....	446.21
Immunization Plant	453.09	.....	453.09	870.71	.....	870.71	393.14	.....	393.14
Repairs—Yard Structures	12,153.72	12,153.72	.....	14,457.73	14,457.73	.....	17,426.06	17,426.06	.....
Repairs—Water Lines	2,602.90	2,602.90	.....	2,091.28	2,091.28	.....	3,124.43	3,124.43	.....
Repairs—Sewers	561.76	561.76	.....	1,393.55	1,393.55	.....	480.43	480.43	.....
Repairs—Paving	1,074.16	1,074.16	.....	1,371.98	1,371.98	.....	2,345.81	2,345.81	.....
Repairs—Hay Barn	247.54	247.54	.....	188.20	188.20	.....	202.08	202.08	.....
Repairs—Equipment	319.88	319.88	.....	652.60	652.60	.....	413.46	413.46	.....
Repairs—Outside Property	796.72	796.72	.....	1,648.11	1,648.11	.....	1,948.67	1,948.67	.....
Repairs—Exchange Building	1,755.35	1,755.35	.....	2,493.85	2,493.85	.....	4,194.86	4,194.86	.....
Repairs—Feeding Facilities	281.76	281.76	.....	608.04	608.04	.....	462.85	462.85	.....
Payroll—Traffic Department	6,804.00	.....	6,804.00	7,371.00	.....	7,371.00	5,778.92	.....	5,778.92
Solicitors' Salaries—Traffic Dept.	14,921.00	.....	14,921.00	13,600.86	.....	13,600.86	9,457.70	.....	9,457.70
Casualty Insurance—Traffic Dept.	2.28	.....	2.28	2.80	.....	2.80	2.56	.....	2.56
Postage—Traffic Dept.	326.55	.....	326.55	361.82	.....	361.82	179.88	.....	179.88
Printing and Stationery—Traffic Dept.	371.80	.....	371.80	301.54	.....	301.54	246.32	.....	246.32
Telephone and Telegraph—Traffic Dept.	1,681.50	.....	1,681.50	1,832.51	.....	1,832.51	1,871.25	.....	1,871.25
Miscellaneous—Traffic Dept.	1,168.24	.....	1,168.24	222.85	.....	222.85	105.17	.....	105.17
Solicitors' Expense—Traffic Dept.	14,312.25	.....	14,312.25	11,517.16	.....	11,517.16	8,880.08	.....	8,880.08
Advertising—Traffic Dept.	3,870.11	.....	3,870.11	3,583.32	.....	3,583.32	3,035.73	.....	3,035.73
Stock Show	2,764.99	.....	2,764.99	3,069.67	.....	3,069.67	3,199.31	.....	3,199.31
Exchange Building—Labor	7,029.05	.....	7,029.05	8,800.27	.....	8,800.27	10,286.63	.....	10,286.63
Exchange Building—Casualty Insurance	265.79	.....	265.79	287.97	.....	287.97	322.14	.....	322.14
Exchange Building—Elec., Water, Heat	5,055.68	.....	5,055.68	4,946.03	.....	4,946.03	5,262.79	.....	5,262.79
Exchange Building—Supplies	1,635.39	.....	1,635.39	1,775.92	.....	1,775.92	2,002.37	.....	2,002.37
Truck Washing Expense	234.01	.....	234.01	231.64	.....	231.64	204.43	.....	204.43
Sale Pavilion Expense	3.50	.....	3.50	.....	.....	.....	.....	.....	.....
Miscellaneous O. R. E. Expense	2,334.07	2,334.07	.....	2,514.54	2,514.54	.....	2,410.81	2,410.81	.....
[illegible]ty Insurance O. R. E.	36.96	36.96	.....	36.94	36.94	.....	36.94	36.94	.....
Tractor and Trailer Expense	623.93	.....	623.93	745.97	.....	745.97	1,384.80	.....	1,384.80
Audit Expense	330.05	.....	330.05	651.00	.....	651.00	469.14	.....	469.14
Repairs—Furniture and Fixtures	.....	.....	.....	.....	.....	.....	16.84	16.84	.....
Bad Debts	320.52	.....	320.52	31.29	.....	31.29	168.58	.....	168.58

	1,500.00		1,500.00	1,608.95		1,608.95	1,934.63		1,934.63	
Pensions	5,268.74		5,268.74	2,525.00		2,525.00	1,957.50		1,957.50	
Donations and Subscriptions	2,423.46	$ 1,360.56	1,062.90	2,595.11	1,321.70	1,273.41	2,437.20	$ 1,342.20	1,095.00	
Taxes	43,475.84	43,475.84		57,663.51	57,663.51		72,878.61	72,878.61		
Depreciation	122,509.92	122,509.92		123,066.12	123,066.12		121,427.64	121,427.64		1
Insurance	13,701.59	1,042.69	12,658.90	14,430.61	1,098.17	13,332.44	13,209.63	1,005.25	12,204.38	1
Valuation Bearing	3,082.54		3,082.54	3,479.43		3,479.43	3,986.79		3,986.79	1
Bond Interest	46,014.02	46,014.02		48,517.19	48,517.19		15,277.80	15,277.80		3
Bond Discount	4,855.83	4,855.83		6,241.24	6,241.24		2,904.35	2,904.35		
Office Rent	1,782.00		1,782.00	1,782.00		1,782.00	1,419.66		1,419.66	
Office Supplies	682.67		682.67	709.88		709.88	1,383.82		1,383.82	
Office Expense	120.24		120.24	122.23		122.23	128.60		128.60	
Office Postage	267.07		267.07	242.62		242.62	277.29		277.29	
Telephone and Telegraph	903.31		903.31	692.82		692.82	426.17		426.17	
Store House Expense	1,117.60		1,117.60	1,232.72		1,232.72	1,653.61		1,653.61	
Engineering	3.41		3.41	6.83		6.83	849.90		849.90	
Fiscal Agents, Registrars, etc.	308.12	250.30	57.82	314.06	253.13	60.93	1,403.64	1,403.64		
Yard Payrolls	119,956.40		119,956.40	132,239.82		132,239.82	137,133.42		137,133.42	14
Yard Cleaning and Disinfecting	19,241.37		19,241.37	20,123.07		20,123.07	21,126.41		21,126.41	2
Yard Current	3,749.71		3,749.71	4,342.24		4,342.24	3,942.05		3,942.05	
Yard Casualty Insurance	3,528.75		3,528.75	4,147.50		4,147.50	4,896.81		4,896.81	
Estrays	375.07		375.07	852.50		852.50	892.88		892.88	
Water, Electricity and Heat	13,164.98		13,164.98	13,448.91		13,448.91	13,410.55		13,410.55	1
Company Barn	1,922.28		1,922.28	1,891.79		1,891.79	2,056.57		2,056.57	
Yard Truck	120.47		120.47	247.33		247.33	244.69		244.69	
Cost of Hog Pen Bedding	177.96		177.96	187.21		187.21	338.38		338.38	
Milling Feed Expense	1,749.70		1,749.70	1,905.76		1,905.76	1,801.62		1,801.62	
Grain Elevator	1,005.70		1,005.70	1,073.95		1,073.95	1,530.97		1,530.97	2
Weighing	3,479.28		3,479.28	3,812.83		3,812.83				
Dipping	85.56		85.56	42.05		42.05	4.78		4.78	1
Car Partitions, etc.	19.72		19.72	253.29		253.29	446.21		446.21	
Immunization Plant	453.09		453.09	870.71		870.71	393.14		393.14	
Repairs—Yard Structures	12,153.72	12,153.72		14,457.73	14,457.73		17,426.06	17,426.06		20
Repairs—Water Lines	2,602.90	2,602.90		2,091.28	2,091.28		3,124.43	3,124.43		5
Repairs—Sewers	561.76	561.76		1,393.55	1,393.55		480.43	480.43		
Repairs—Paving	1,074.16	1,074.16		1,371.98	1,371.98		2,345.81	2,345.81		3
Repairs—Hay Barn	247.54	247.54		188.20	188.20		202.08	202.08		
Repairs—Equipment	319.88	319.88		652.60	652.60		413.46	413.46		
Repairs—Outside Property	796.72	796.72		1,648.11	1,648.11		1,948.67	1,948.67		6
Repairs—Exchange Building	1,755.35	1,755.35		2,493.85	2,493.85		4,194.86	4,194.86		5
Repairs—Feeding Facilities	281.76	281.76		608.04	608.04		462.85	462.85		
Payroll—Traffic Department	6,804.00		6,804.00	7,371.00		7,371.00	5,778.92		5,778.92	4
Solicitors' Salaries—Traffic Dept.	14,921.00		14,921.00	13,600.86		13,600.86	9,457.70		9,457.70	8
Casualty Insurance—Traffic Dept.	2.28		2.28	2.80		2.80	2.56		2.56	
Postage—Traffic Dept.	326.55		326.55	361.82		361.82	179.88		179.88	
Printing and Stationery—Traffic Dept.	371.80		371.80	301.54		301.54	246.32		246.32	
Telephone and Telegraph—Traffic Dept.	1,681.50		1,681.50	1,832.51		1,832.51	1,871.25		1,871.25	1
Miscellaneous—Traffic Dept.	1,168.24		1,168.24	222.85		222.85	105.17		105.17	
Solicitors' Expense—Traffic Dept.	14,312.25		14,312.25	11,517.16		11,517.16	8,880.08		8,880.08	8
Advertising—Traffic Dept.	3,870.11		3,870.11	3,583.32		3,583.32	3,035.73		3,035.73	3
Stock Show	2,764.99		2,764.99	3,069.67		3,069.67	3,199.31		3,199.31	3
Exchange Building—Labor	7,029.05		7,029.05	8,800.27		8,800.27	10,286.63		10,286.63	11
Exchange Building—Casualty Insurance	265.79		265.79	287.97		287.97	322.14		322.14	
Exchange Building—Elec., Water, Heat	5,055.68		5,055.68	4,946.03		4,946.03	5,262.79		5,262.79	5
Exchange Building—Supplies	1,635.39		1,635.39	1,775.92		1,775.92	2,002.37		2,002.37	2
Truck Washing Expense	234.01		234.01	231.64		231.64	204.43		204.43	
Sale Pavilion Expense	3.50		3.50							
Miscellaneous O. R. E. Expense	2,334.07	2,334.07		2,514.54	2,514.54		2,410.81	2,410.81		2
Casualty Insurance O. R. E.	36.96	36.96		36.94	36.94		36.94	36.94		
Tractor and Trailer Expense	623.93		623.93	745.97		745.97	1,384.80		1,384.80	1
Audit Expense	330.05		330.05	651.00		651.00	469.14		469.14	
Repairs—Furniture and Fixtures							16.84	16.84		
Bad Debts	320.52		320.52	31.29		31.29	168.58		168.58	
Cost of Shoes Sold (Employees)							370.74	370.74		
Bank Exchange										
Manure Sales Expense				30.25		30.25	108.26		108.26	
Bond Issue Expense				1,000.00	1,000.00		8,277.15	8,277.15		
Interest							19.16	19.16		
Total	$531,213.31	$241,673.98	$289,539.33	$570,618.94	$266,853.22	$303,765.72	$554,116.43	$257,969.78	$296,146.65	$625

1930				1929			1928			1927		
(3) Expenses Considered	(1) Expenses Per Books	(2) Expenses Eliminated	(3) Expenses Considered	(1) Expenses Per Books	(2) Expenses Eliminated	(3) Expenses Considered	(1) Expenses Per Books	(2) Expenses Eliminated	(3) Expenses Considered	(1) Expenses Per Books	(2) Expenses Eliminated	(3) Expenses Considered
$ 25,155.88	$ 21,359.20	.....	$ 21,359.20	$ 21,608.87	.....	$ 21,608.87	$ 20,035.18	.....	$ 20,035.18	$ 19,990.41	.....	$ 19,990.41
6,190.48	5,814.44	.....	5,814.44	3,473.08	$ 787.62	2,685.46	1,531.71	.....	1,531.71	1,553.00	.....	1,553.00
547.27	471.12	.....	471.12	607.03	.....	607.03	1,023.90	.....	1,023.90	968.60	.....	968.60
1,608.95	1,934.63	.....	1,934.63	1,960.00	.....	1,960.00	1,650.00	.....	1,650.00	1,500.00	.....	1,500.00
2,525.00	1,957.50	.....	1,957.50	920.00	.....	920.00	1,500.00	.....	1,500.00	1,500.00	.....	1,500.00
1,273.41	2,437.20	$ 1,342.20	1,095.00	3,338.89	1,715.20	1,623.69	2,802.58	$ 1,462.11	1,340.47	2,455.55	$ 1,246.09	1,209.46
.....	72,878.61	72,878.61	.....	75,713.10	75,713.10	.....	81,851.13	81,851.13	.....	82,925.91	82,925.91	.....
.....	121,427.64	121,427.64	.....	129,908.84	129,908.84	.....	127,645.89	127,645.89	.....	127,597.03	127,597.03	.....
13,332.44	13,209.63	1,005.25	12,204.38	13,237.21	1,007.35	12,229.86	13,790.95	1,049.49	12,741.46	14,144.19	1,076.37	13,067.82
3,479.43	3,986.79	.....	3,986.79	12,683.28	.....	12,683.28	.....	.....	.....	.....	.....	.....
.....	15,277.80	15,277.80	.....	56,250.00	56,250.00	.....	56,250.00	56,250.00	.....	56,250.00	56,250.00	.....
.....	2,904.35	2,904.35	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....
1,782.00	1,419.66	.....	1,419.66	1,141.08	.....	1,141.08	1,141.08	.....	1,141.08	1,141.08	.....	1,141.08
709.88	1,383.82	.....	1,383.82	1,841.81	.....	1,841.81	2,245.37	.....	2,245.37	1,586.88	.....	1,586.88
122.23	128.60	.....	128.60	109.69	.....	109.69	117.35	.....	117.35	98.47	.....	98.47
242.62	277.29	.....	277.29	182.95	.....	182.95	216.61	.....	216.61	203.75	.....	203.75
692.82	426.17	.....	426.17	198.76	.....	198.76	155.53	.....	155.53	109.33	.....	109.33
1,232.72	1,653.61	.....	1,653.61	1,457.86	.....	1,457.86	1,453.04	.....	1,453.04	1,449.12	.....	1,449.12
6.83	849.90	.....	849.90	914.67	.....	914.67	906.31	.....	906.31	995.10	.....	995.10
60.93	1,403.64	1,403.64	.....	265.62	265.62	.....	265.62	265.62	.....	125.00	125.00	.....
132,239.82	137,133.42	.....	137,133.42	140,644.53	.....	140,644.53	140,393.55	.....	140,393.55	136,981.57	.....	136,981.57
20,123.07	21,126.41	.....	21,126.41	23,930.64	.....	23,930.64	25,091.08	.....	25,091.08	27,419.52	.....	27,419.52
4,342.24	3,942.05	.....	3,942.05	4,798.76	.....	4,798.76	3,292.95	.....	3,292.95	3,534.84	.....	3,534.84
4,147.50	4,896.81	.....	4,896.81	5,483.73	.....	5,483.73	5,861.76	.....	5,861.76	6,225.69	.....	6,225.69
852.50	892.88	.....	892.88	1,327.47	.....	1,327.47	818.29	.....	818.29	540.59	.....	540.59
13,448.91	13,410.55	.....	13,410.55	15,487.38	.....	15,487.38	14,061.94	.....	14,061.94	13,434.49	.....	13,434.49
1,891.79	2,056.57	.....	2,056.57	3,048.43	.....	3,048.43	3,338.65	.....	3,338.65	4,010.08	.....	4,010.08
247.33	244.69	.....	244.69	214.58	.....	214.58	112.50	.....	112.50	.....	.....	.....
187.21	338.38	.....	338.38	304.50	.....	304.50	210.41	.....	210.41	193.33	.....	193.33
1,905.76	1,801.62	.....	1,801.62	.....	.....	.....	.....	.....	.....	.....	.....	.....
1,073.95	1,530.97	.....	1,530.97	2,177.28	.....	2,177.28	2,330.94	.....	2,330.94	3,077.02	.....	3,077.02
3,812.83	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....
42.05	4.78	.....	4.78	1,371.31	.....	1,371.31	145.24	.....	145.24	309.82	.....	309.82
253.29	446.21	.....	446.21	591.50	.....	591.50	405.14	.....	405.14	1,115.59	.....	1,115.59
870.71	393.14	.....	393.14	710.80	.....	710.80	882.64	.....	882.64	824.29	.....	824.29
.....	17,426.06	17,426.06	.....	20,679.02	20,679.02	.....	31,258.17	31,258.17	.....	24,495.79	24,495.79	.....
.....	3,124.43	3,124.43	.....	5,440.37	5,440.37	.....	3,017.67	3,017.67	.....	2,600.53	2,600.53	.....
.....	480.43	480.43	.....	567.23	567.23	.....	818.01	818.01	.....	1,174.18	1,174.18	.....
.....	2,345.81	2,345.81	.....	3,647.89	3,647.89	.....	2,559.49	2,559.49	.....	1,863.71	1,863.71	.....
.....	202.08	202.08	.....	567.05	567.05	.....	50.72	50.72	.....	51.37	51.37	.....
.....	413.46	413.46	.....	397.47	397.47	.....	420.37	420.37	.....	574.46	574.46	.....
.....	1,948.67	1,948.67	.....	6,933.58	6,933.58	.....	3,094.34	3,094.34	.....	4,944.69	4,944.69	.....
.....	4,194.86	4,194.86	.....	5,210.77	5,201.77	.....	3,978.84	3,978.84	.....	3,357.13	3,357.13	.....
.....	462.85	462.85	.....	.....	.....	.....	516.67	516.67	.....	.....	.....	.....
7,371.00	5,778.92	.....	5,778.92	4,395.03	.....	4,395.03	4,267.34	.....	4,267.34	4,216.86	.....	4,216.86
13,600.86	9,457.70	.....	9,457.70	8,306.19	.....	8,306.19	8,473.15	.....	8,473.15	9,064.18	.....	9,064.18
2.80	2.56	.....	2.56	2.36	.....	2.36	2.25	.....	2.25	2.52	.....	2.52
361.82	179.88	.....	179.88	108.93	.....	108.93	140.72	.....	140.72	211.09	.....	211.09
301.54	246.32	.....	246.32	192.42	.....	192.42	220.34	.....	220.34	319.89	.....	319.89
1,832.51	1,871.25	.....	1,871.25	1,588.50	.....	1,588.50	1,477.40	.....	1,477.40	1,956.81	.....	1,956.81
222.85	105.17	.....	105.17	265.85	.....	265.85	674.12	.....	674.12	355.92	.....	355.92
11,517.16	8,880.08	.....	8,880.08	8,903.93	.....	8,903.93	7,848.94	.....	7,848.94	8,879.22	.....	8,879.22
3,583.32	3,035.73	.....	3,035.73	3,395.30	.....	3,395.30	4,391.96	.....	4,391.96	3,653.18	.....	3,653.18
3,069.67	3,199.31	.....	3,199.31	3,007.25	.....	3,007.25	2,912.25	.....	2,912.25	2,953.97	.....	2,953.97
8,800.27	10,286.63	.....	10,286.63	11,472.43	.....	11,472.43	10,915.08	.....	10,915.08	10,944.29	.....	10,944.29
287.97	322.14	.....	322.14	337.31	.....	337.31	329.83	.....	329.83	349.79	.....	349.79
4,946.03	5,262.79	.....	5,262.79	5,754.86	.....	5,754.86	5,208.25	.....	5,208.25	6,003.65	.....	6,003.65
1,775.92	2,002.37	.....	2,002.37	2,157.84	.....	2,157.84	2,225.50	.....	2,225.50	2,275.84	.....	2,275.84
231.64	204.43	.....	204.43	127.37	.....	127.37	239.11	.....	239.11	.....	.....	.....
.....	.....	.....	.....	.....	.....	.....	76.72	.....	76.72	115.38	.....	115.38
.....	2,410.81	2,410.81	.....	2,798.94	2,798.94	.....	2,541.00	2,541.00	.....	2,636.29	2,636.29	.....
.....	36.94	36.94	.....	36.94	36.94	.....	41.70	41.70	.....	55.49	55.49	.....
745.97	1,384.80	.....	1,384.80	1,453.93	.....	1,453.93	1,224.21	.....	1,224.21	753.45	.....	753.45
651.00	469.14	.....	469.14	689.92	.....	689.92	325.00	.....	325.00	.....	.....	.....
	18.84	18.84										

.70	1,273.41	2,437.20	$ 1,342.20	1,095.00	3,338.89	1,715.20	920.00	1,500.00		1,500.00	1,500.00		1,500.00
.51		72,878.61	72,878.61		75,713.10	75,713.10	1,623.69	2,802.58	$ 1,462.11	1,340.47	2,455.55	$ 1,246.09	1,209.46
.12		121,427.64	121,427.64		129,908.84	129,908.84		81,851.13	81,851.13		82,925.91	82,925.91	
.17	13,332.44	13,209.63	1,005.25	12,204.38	13,237.21	1,007.35	12,229.86	13,790.95	1,049.49	12,741.46	14,144.19	1,076.37	13,067.82
	3,479.43	3,986.79		3,986.79	12,683.28		12,683.28						
.19		15,277.80	15,277.80		56,250.00	56,250.00		56,250.00	56,250.00		56,250.00	56,250.00	
.24		2,904.35	2,904.35										
	1,782.00	1,419.66		1,419.66	1,141.08		1,141.08	1,141.08		1,141.08	1,141.08		1,141.08
	709.88	1,383.82		1,383.82	1,841.81		1,841.81	2,245.37		2,245.37	1,586.88		1,586.88
	122.23	128.60		128.60	169.69		109.69	117.35		117.35	98.47		98.47
	242.62	277.29		277.29	182.95		182.95	216.61		216.61	203.75		203.75
	692.82	426.17		426.17	198.76		198.76	155.53		155.53	109.33		109.33
	1,232.72	1,653.61		1,653.61	1,457.86		1,457.86	1,453.04		1,453.04	1,449.12		1,449.12
	6.83	849.90		849.90	914.67		914.67	906.31		906.31	995.10		995.10
.13	60.93	1,403.64	1,403.64		265.62	265.62		265.62	265.62		125.00	125.00	
	132,239.82	137,133.42		137,133.42	140,644.53		140,644.53	140,393.55		140,393.55	136,981.57		136,981.57
	20,123.07	21,126.41		21,126.41	23,930.64		23,930.64	25,091.08		25,091.08	27,419.52		27,419.52
	4,342.24	3,942.05		3,942.05	4,798.76		4,798.76	3,292.95		3,292.95	3,534.84		3,534.84
	4,147.50	4,896.81		4,896.81	5,483.73		5,483.73	5,861.76		5,861.76	6,225.69		6,225.69
	852.50	892.88		892.88	1,327.47		1,327.47	818.29		818.29	540.59		540.59
	13,448.91	13,410.55		13,410.55	15,487.38		15,487.38	14,061.94		14,061.94	13,434.49		13,434.49
	1,891.79	2,056.57		2,056.57	3,048.43		3,048.43	3,338.65		3,338.65	4,010.08		4,010.08
	247.33	244.69		244.69	214.58		214.58	112.50		112.50			
	187.21	338.38		338.38	304.50		304.50	210.41		210.41	193.33		193.33
	1,905.76	1,801.62		1,801.62									
	1,073.95	1,530.97		1,530.97	2,177.28		2,177.28	2,330.94		2,330.94	3,077.02		3,077.02
	3,812.83												
	42.05	4.78		4.78	1,371.31		1,371.31	145.24		145.24	309.82		309.82
	253.29	446.21		446.21	591.50		591.50	405.14		405.14	1,115.59		1,115.59
	870.71	393.14		393.14	710.80		710.80	882.64		882.64	824.29		824.29
.73		17,426.06	17,426.06		20,679.02	20,679.02		31,258.17	31,258.17		24,495.79	24,495.79	
.28		3,124.43	3,124.43		5,440.37	5,440.37		3,017.67	3,017.67		2,600.53	2,600.53	
.55		480.43	480.43		567.23	567.23		818.01	818.01		1,174.18	1,174.18	
.98		2,345.81	2,345.81		3,647.89	3,647.89		2,559.49	2,559.49		1,863.71	1,863.71	
.20		202.08	202.08		567.05	567.05		50.72	50.72		51.37	51.37	
.60		413.46	413.46		397.47	397.47		420.37	420.37		574.46	574.46	
.11		1,948.67	1,948.67		6,933.58	6,933.58		3,094.34	3,094.34		4,944.69	4,944.69	
.85		4,194.86	4,194.86		5,210.77	5,201.77		3,978.84	3,978.84		3,357.13	3,357.13	
.04		462.85	462.85					516.67	516.67				
	7,371.00	5,778.92		5,778.92	4,395.03		4,395.03	4,267.34		4,267.34	4,216.86		4,216.86
	13,600.86	9,457.70		9,457.70	8,306.19		8,306.19	8,473.15		8,473.15	9,064.18		9,064.18
	2.80	2.56		2.56	2.36		2.36	2.25		2.25	2.52		2.52
	361.82	179.88		179.88	108.93		108.93	140.72		140.72	211.09		211.09
	301.54	246.32		246.32	192.42		192.42	220.34		220.34	319.89		319.89
	1,832.51	1,871.25		1,871.25	1,588.50		1,588.50	1,477.40		1,477.40	1,956.81		1,956.81
	222.85	105.17		105.17	265.85		265.85	674.12		674.12	355.92		355.92
	11,517.16	8,880.08		8,880.08	8,903.93		8,903.93	7,848.94		7,848.94	8,879.22		8,879.22
	3,583.32	3,035.73		3,035.73	3,395.30		3,395.30	4,391.96		4,391.96	3,653.18		3,653.18
	3,069.67	3,199.31		3,199.31	3,007.25		3,007.25	2,912.25		2,912.25	2,953.97		2,953.97
	8,800.27	10,286.63		10,286.63	11,472.43		11,472.43	10,915.08		10,915.08	10,944.29		10,944.29
	287.97	322.14		322.14	337.31		337.31	329.83		329.83	349.79		349.79
	4,946.03	5,262.79		5,262.79	5,754.86		5,754.86	5,208.25		5,208.25	6,003.65		6,003.65
	1,775.92	2,002.37		2,002.37	2,157.84		2,157.84	2,225.50		2,225.50	2,275.84		2,275.84
	231.64	204.43		204.43	127.37		127.37	239.11		239.11			
								76.72		76.72	115.38		115.38
.54		2,410.81	2,410.81		2,798.94	2,798.94		2,541.00	2,541.00		2,636.29	2,636.29	
.94		36.94	36.94		36.94	36.94		41.70	41.70		55.49	55.49	
	745.97	1,384.80		1,384.80	1,453.93		1,453.93	1,224.21		1,224.21	753.45		753.45
	651.00	469.14		469.14	689.92		689.92	325.00		325.00			
		16.84	16.84		6.17	6.17		25.30	25.30		7.76	7.76	
	31.29	168.58		168.58	36.61		36.61	2.63		2.63	99.64		99.64
		370.74	370.74		598.97	598.97		518.79	518.79		727.35	727.35	
	30.25	108.26		108.26	14.05		14.05	28.10		28.10	28.10		28.10
.00		8,277.15	8,277.15		24.00		24.00	97.45		97.45			
		19.16	19.16		289.22	289.22							
.2	$303,765.72	$554,116.43	$257,969.78	$296,146.65	$625,302.35	$312,812.35	$312,490.00	$611,448.76	$317,365.31	$294,083.45	$606,932.78	$311,709.15	$295,223.63

[fol. 153] Miscellaneous Administrative Expenses:

182. The amounts eliminated from this item in the years 1931 and 1929, respectively, represent non-recurring expenditures. The inclusion of the total amount represented by these items would provide for an annual expenditure which does not occur in that amount each year. An amortized expenditure on account of these items has been considered in arriving at the reasonable expenses hereinafter found.

Donations and Subscriptions:

183. The eliminations from this item are for the reason that the particular amount involved represents contributions to charity which, if respondent desires to make, should be borne by its owners rather than its patrons, or a contribution to some organization whose principal activities are lobbying, or a contribution to some organization such as the United States Chamber of Commerce whose activities are so removed from the business of operating a stockyard that the service rendered, if any, is not properly classible as necessary in the conduct of a stockyard.

Taxes:

184. All taxes have been eliminated from the above table of expenses for the reason that the matter of the tax expense reasonably to be anticipated in the future is considered separately and included hereinafter.

Repairs and Depreciation:

185. All amounts representing expenditures for repairs and provision for depreciation reserve are eliminated for the reason that an amount to cover these items is considered separately and included hereinafter.

[fol. 154] Insurance:

186. The amounts eliminated from this item represent the cost of insurance on structures hereinbefore found to be not used and useful.

Bond Interest:

187. This item is eliminated in its entirety for the reason that it is covered by the fair return hereinbefore found.

Bond Discount:

188. This item entirely is eliminated for the reason that it represents annual contributions to cover a discount taken upon an issue of bonds. The rate of return hereinbefore found is arrived at on the basis of being sufficient to enable respondent to sell its securities at their full par value. If respondent elects to offer a rate of interest on its bonds which causes them to sell below par the interest plus the discount spread over the life of the bonds is but a return on the bonds. Therefore, to include this item in the operating expense would be to duplicate a provision that already has been made in the fair return.

Fiscal Agents, Registrars, etc.:

189. The amounts eliminated in connection with this item are capital, not operating expenses. To include the expenses which here are [illegible]ted would be to take into consideration costs incurred by respondent in connection with obtaining capital wherewith to procure its property.

[fol. 155] Miscellaneous Outside Real Estate—Casualty Insurance, Outside Real Estate:

190. These expenses are eliminated because they relate to property found to be not used and useful.

Cost of Shoes Sold Employees:

191. This represents the cost of a commodity from the sale of which was received an income greater than the cost. Both are eliminated for the reason that they have no connection with the operation of the stockyard.

Bond Issue Expense:

192. This item is eliminated in its entirety for the reason heretofore stated relative to the item, Fiscal Agents and Registrars, etc.

Interest:

193. This was paid as penalty for underpayment of income tax and is, therefore, not properly coverable into rates.

193a. Upon a consideration of the expenses incurred by respondent during the years 1927 to 1932, both inclusive, which have been discussed heretofore and a consideration of the volume of business used as a rate factor hereinafter and upon the facts in the record as a whole, it is found that $302,500 is a reasonable amount to be considered as a rate factor for reasonable operating expenses other than taxes and provision for depreciation and repairs.

[fol. 156] Necessary Revenue

193b. The following is a summary of the amounts heretofore found to be reasonable and for which a schedule of reasonable rates must provide:

Fair return on fair value of respondent's used and useful property		$192,010
Operating expenses:		
Repairs and annual contribution to a reserve for depreciation	$80,000	
Taxes	43,767	
All other operating expenses	302,500	
		426,267
		$618,277

XII

Volume of Business

194. The revenues received by respondent arise from charges assessed for yarding livestock arriving fresh from the country, from charges made for yarding livestock resold or reweighed and from yardage charges made for the use of feeding facilities. In addition to yardage revenues, respondent derives profit from the sale of feed and bedding, It receives revenues also from the rendering of special services heretofore discussed.

Livestock Received Fresh From the Country

195. The number of head of livestock arriving fresh from the country on which the respondent assessed charges during each of the six years from 1927 to 1932 is as follows:

[fol. 157]

Year	Cattle	Calves	Hogs	Sheep
1932	343,464	77,807	1,148,990	1,210,019
1931	406,946	77,412	1,227,341	1,443,881
1930	435,908	99,831	1,367,410	1,517,708
1929	471,074	92,054	1,541,710	1,460,732
1928	474,352	87,029	1,594,606	1,430,495
1927	511,008	101,579	1,359,683	1,215,028

Livestock Resold or Reweighed

196. The tariff of the respondents provides for a charge on livestock resold in the commission division equal to one-half of that charged upon livestock arriving by rail. The testimony of witnesses for the respondent is to the effect that respondent makes a charge on all resales, except on livestock going to the country, of one-half the original yardage, irrespective of whether resale occurs in the commission division or in other parts of the stockyard. The evidence indicates that respondent is not making charges for resales in accordance with the provisions of its published tariff. The record shows for the years 1931 and 1932 the number of livestock of each species to which a general resale or reweigh charge would apply. The record shows the total number of head of each species of livestock handled by dealers for the years 1931 to 1932 and also the total number of head of each species shipped by dealers on consignment to other markets. The difference represents the number upon which a general resale or reweigh charge may be made applicable. For the year 1931 the number of head of livestock to which a reweigh or resale charge would apply was 91,730 head of cattle and calves, 267,730 hogs and 4,059 sheep. The corresponding figures for 1932 were 76,560 cattle, 180,393 hogs and 1,939 sheep. The average of these figures for the two years is 84,154 cattle, 224,061 hogs and 2,999 sheep.

[fol. 158] Livestock Handled in Feed Lot Facilities

197. Prior to June, 1930, respondent leased on the basis of a stipulated rental the use of various feed lot facilities to different operators handling this class of livestock. Subsequent to that date, it placed a provision in its tariff making a charge for the use of feed lot facilities of 5¢ per head

on sheep and hogs and 15¢ per head on cattle. Consequently, the number of head upon which is assessed the per head charge provided for by the tariff is shown only for the periods subsequent to the date the tariff became effective. The same is, of course, true of the revenues collected under the tariff. During the period in which the tariff was applicable the number of head of livestock handled in the feed lot facilities was as follows:

	1930 (6 mos.)	1931	1932
Cattle	4,086	4,998	2,321
Hogs	357	1,644	1,198
Sheep	39,882	121,901	52,385

198. The principal feeding business as shown by the above figures is the feeding of sheep. This business has, of course, been adversely affected by the general economic conditions which have prevailed since early in 1930. Prior to this date the number of sheep handled in these feed lots was materially greater than it has been since a per head yardage charge was made applicable. The manager of respondent's company, appearing as a witness in the first hearing, testified that in 1928 approximately 247,000 sheep were handled in these feed lots.

[fol. 159] Fluctuations in Market Receipts

199. The record shows the number of head of livestock of each species received each year for the 24-year period from 1908 to 1931, inclusive. The receipts of livestock by the respondent move in cycles. The receipts of cattle increased from a low point in 1914 to a high point in 1918, and then declined to another low point in 1921. Following this year, there was an increase up to 1923, after which for a period of about two years receipts remained stationary. Following 1925 and continuing until 1931, there was a decrease. The number of receipts in 1931 was equal approximately to those in 1916. In the case of calves, receipts increased from 1914 to 1925 except for 1920 and 1921, and since that time, except for the years 1929 and 1930, there has occurred a decrease, the receipts in 1931 being about equal to those in 1918. With respect to hogs, low points and high points in the receipts occurred at shorter intervals. There was a decline from 1912 to 1915. Other low

points occurred in 1917, 1921 and 1927. High points occurred in 1916, 1918, 1923 and 1928. Since 1928, the tendency has been downward.

200. The conclusion to be drawn from these facts is that fluctuations in receipts are a characteristic of the business in which the respondent is engaged and that the years immediately preceding the dates of the hearings were years of comparatively low receipts. There are factors in the livestock situation which create some doubt as to whether in the near future the receipts of the respondent will increase to a point comparable to that of their maximum receipts in the past. It is a reasonable conclusion, however, that there will be an increase due to the cyclical trend inherent in the business in which the respondent is engaged.

[fol. 160] Volume Used as Rate Factor

201. No prediction is here made as to the exact number of head of livestock which will be received or handled by the respondent in the future. The volume set forth below constitutes in the light of all the information in the record the volume factor used herein in determination of the reasonableness of rates.

	Truck	Rail	Resales	Feed lot
Cattle	260,000	140,000	75,000	5,000
Calves	70,000	15,000	5,000	
Hogs	1,206,250	68,750	200,000	1,200
Sheep	300,000	900,000	2,500	85,000

Unloading and Loading

202. The revenues received by respondent for unloading and loading are derived from those of its receipts which arrive by rail and those of its shipments which move out by rail. The tendency in recent years has been towards an increase in trucked-in livestock and a decrease in rail receipts. This change has resulted in a decline in revenues incident to the unloading of livestock. The loading of livestock shipped out by rail has been affected to some extent by the tendency to ship livestock to nearby points by truck. As has been stated the charge for unloading and loading has been increased. Had there been no change in the unloading and loading charges a given number of receipts of

livestock under the present mode of arrival would have generated less revenues than the same number would in the past. The higher rate now in effect will tend to off-set somewhat the loss in unloading and loading revenues on account of the change in method of arrival.

[fol. 161] Feed

203. Generally speaking, a given number of livestock arriving at market by truck consumes less feed than it would had it arrived by rail. Feed sold by the respondent consists of that supplied to the commission men, to dealers, who generally hold their livestock longer than the commission men hold that consigned to them, and to the Anchor Serum Company. The amount of feed handled by the respondent during the years 1928 to 1932, inclusive, except corn and miscellaneous feed sold to the Anchor Serum Company and corn milled, is as follows:

[fol. 161]

	1927	1928	1929	1930	1931	1932
Hay (Cwt.)	92,680	98,307	87,005	76,897	69,792	54,222
Corn (Bu.)	131,503	138,608	123,387	104,822	80,552	56,215
Oats (Bu.)	2,423	2,868	2,565	2,140	2,899	1,219
Bedding (Bale)	18,153	18,776	20,611	15,913	14,990	11,830
Milled and Mis. Feed (Cwt.)	4,228	4,917	4,130	4,479	5,328	7,818

204. Due to the changes which have taken place in the business it is not to be expected that the sales of corn and hay in the future will reach the proportions attained during the earlier years indicated above. For the purpose of determination of the reasonableness of rates the quantity of feed used as a rate factor is as follows:

Hay—60,000 cwt.
Corn—65,000 bu.
Oats—2,000 bu.
Bedding—14,500 bales
Misc. Feed—5,000 cwt.

Special Services

205. The stockyard company renders certain special services hereinbefore discussed. The revenue derived from the rendering of these services has not varied greatly dur- [fol. 162] ing the six-year period for which information is available in the record.

XIII

Unreasonableness of Existing Rates

206. An application of the rates now being charged by the respondent to the volume of business hereinbefore discussed produces revenues in excess of those necessary to pay the reasonable expenses incurred in handling that business and a fair return upon the fair value of respondent's property. Moreover, under the existing schedule shippers of livestock who consign their animals to commission men are charged more by the respondent for the use of its facilities in handling such livestock for a shorter period of time than are those who use that portion of its facilities hereinbefore referred to as feed lots for a much longer period of time. It is found that the schedule of rates and charges now in effect is unreasonable and unjustly discriminatory.

XIV

Reasonable Rates

207. On the basis of all the foregoing and the entire record in this proceeding, it is found and concluded that the following constitute and are the maximum reasonable rates and charges for the following services rendered by the respondent, namely:

[fol. 163]

Yardage

	Cattle	Calves	Hogs	Sheep and Goats	Horses and Mules
Received by vehicle on on foot	35¢	22¢	12¢	8¢	35¢
Received by rail	27¢	17¢	8¢	6¢	35¢
Resold or reweighed for purpose of sale	17½¢	11¢	6¢	4¢	17½¢
Handled in feedlot facilities	60¢	..	38¢	38¢	.....

Feed and Bedding

Hay	Current market price, f.o.b. stockyards, plus 60¢ per cwt.
Corn	Current market price, f.o.b. stockyards, plus 50¢ per bushel
Oats	Current market price, f.o.b. stockyards, plus 25¢ per bushel
Mill Feed	Current market price, f.o.b. stockyards, plus 80¢ per cwt.
Bedding	Current market price, f.o.b. stockyards, plus 40¢ per bale

The charge made for the above by respondent shall be divisible by 5 and respondent shall amend said charges when the margin between the cost and sale price of feed and bedding varies $.05 from the margin as specified above.

Dipping and Spraying

Cattle	35¢ per head, minimum	$35.00
Calves	15¢ " " "	35.00
Hogs	5¢ " " "	
Sheep or Goats	5¢ " " "	8.00

Hog Immunizing Plant

Use of services for vaccinating hogs ..... 10¢ per head

Cattle Testing Barn

Cattle tested for tuberculosis and other diseases:
Use of specially equipped barns, including feed, bedding and water ..... $1.00 per head

[fol. 164]

Cleaning and Disinfecting

Single pens	$2.50
Double pens	4.00
Chutes	2.50
Alleys	0.37 per 100 square feet
Wagons and small trucks	.75 each
Trucks of 2 tons and over	1.00 each

Bedding and Shelter Pens

Bedded pens for hogs	$1.00 per car per night
Bedded pens for hogs	.50 per half carload per night
Bedded pens for hogs, truck division	.15 per pen per night
Shelter pens for cattle	.10 per head
Shelter pens for calves	.05 per head each 24 hours

$2.00 minimum each pen.

208. The revenues of the respondent arising from the application to its business of the rates set forth above and the miscellaneous revenues arising from stockyard operations, charges for which are not set forth in the schedule, are as follows:

Yardage	$412,775
Profit on feed and bedding, including that sold to Anchor Serum Company	82,800
Loading and Unloading	22,500
Feedlot Operations	35,756
Miscellaneous stockyard operations	68,000
Total	$621,831

The revenues necessary to meet reasonable expenses and a fair return on the fair value of respondent's used and useful property as heretofore found are:

Miscellaneous Operating Expenses	$302,500
Repairs and Depreciation	80,000
Taxes	43,767
	$426,267
Fair Return	192,010
	$618,277

[fol. 165] The schedule found above to be reasonable assesses a resale charge on all those who receive the services incident thereto, and not on only a part of them, as is the case with the schedule now in effect. It assesses also on those to whom feedlot service is furnished a charge sufficient to cover repairs and depreciation and pay a fair return on the value of that portion of the property used exclusively by them, and does not levy these expenses mainly on other users of the facilities, as does the schedule now in effect.

Order

It is, therefore, ordered that the respondent, on and after thirty days from the date of this order, cease and desist from demanding or collecting for yardage, feed or bedding, the rate or rates shown therefor in the schedule of rates and charges filed with the Secretary of Agriculture on the 30th day of September, 1929, and designated and known as St. Joseph Stock Yards Company Tariff No. 5.

It is further ordered that the respondent on and after thirty days from the date of this order shall not publish, demand or collect any rate or charge for the furnishing of any stockyard service in excess of the rates and charges hereinbefore found and determined to be just and reasonable for the furnishing of such service.

It is further ordered that at least ten days prior to the thirtieth day from the date of this order the respondent publish, give notice of, and file with the Secretary of Agriculture, in accordance with the Packers and Stockyards Act, 1921, and the regulations of the Secretary of Agriculture thereunder, a schedule effective on the thirtieth day

from the date of this order showing all rates and charges for [fol. 166] the stockyard services furnished by respondent at the St. Joseph Stockyards, St. Joseph, Missouri, and all rules and regulations changing, affecting or determining such rates or charges, and that no rate or charge so shown for any such stockyard service be in excess of the rate or charge hereinbefore determined to be just and reasonable for such service.

It is further ordered that, for the reasons hereinbefore stated, respondent's petition for a rehearing in this matter be, and the same hereby is denied.

It is further ordered that a copy of this order be transmitted by registered mail to respondent.

In witness whereof the Secretary of Agriculture has hereunto set his hand and caused the official seal of the Department of Agriculture to be affixed in the City of Washington, District of Columbia, this 4th day of May, 1934.

H. A. Wallace, Secretary of Agriculture.

[fol. 167] IN UNITED STATES DISTRICT COURT

[Title omitted]

ANSWER—Filed May 13, 1934

Come now the defendants in the above entitled cause and make answer to the petition hereinbefore filed as follows:

1. Defendants admit the allegations contained in Paragaphs I to IV, inclusive, of said petition.

2. Defendants admit the allegations contained in Paragraph V of said petition, except that defendants say that "Exhibit A" attached to said petition is not a true and correct copy of the Findings, Conclusion and Order issued by the Secretary of Agriculture in Docket No. 298, on May 4, 1934, in that some substantial errors have been made in the printing thereof. Defendants say that they will later offer a memorandum to this Court calling attention to such errors so that appropriate corrections may be made.

3. Answering Paragraph VI of said petition, defendants say that the matters stated therein are conclusions of law which require no answer.

4. Defendants admit the allegations contained in Paragraph VII of said petition. Defendants say, however, that [fol. 168] since the filing of said petition, to wit, on May 16, 1934, the Secretary of Agriculture has issued an order extending the effective date of the order of May 4, 1934, herein sought to be set aside by petitioner. Said order of the Secretary, dated May 16, 1934, provides in part as follows:

It is further ordered that not later than the fifth day of July, 1934, respondent publish, give notice of, and file with the Secretary of Agriculture, in accordance with the Packers and Stockyards Act, 1921, and the regulations of the Secretary of Agriculture thereunder, a schedule, effective ten days from the date of so filing, showing all rates and charges for the stockyard services furnished by respondent at the St. Joseph Stockyards, St. Joseph, Missouri, and all rules and regulations changing, affecting or determining such rates or charges and that no rate or charge so shown for any such stockyard service be in excess of the rate or charge hereinbefore determined to be just and reasonable for such services.

5. Defendants deny each and every allegation contained in Paragraph VIII of said petition.

6. Answering Paragraph IX of said petition, defendants deny that the Findings, Conclusion and Order of the Secretary are contrary to law, confiscatory of petitioner's property, or that they deprive petitioner of its property without due process of law in violation of the Fifth Amendment of the Constitution of the United States or that they are void and of no effect for the reasons stated in the sub-paragraphs of Paragraph IX of said petition, or for any other reason or reasons.

(a) Answering Sub-paragraph (A) of Paragraph IX of said petition, defendants deny each and every allegation contained therein.

(b) Answering Sub-paragraph (B) of Paragraph IX of said petition, defendants say that the Secretary made his determination as to the total amount of land used and useful by petitioner in performing stock yard services in square feet and not in acres, and that he determined that 4,410,361 square feet of land is used and useful by petitioner in performing stock yard services, but defendants admit that 101,-

248 acres is substantially the correct number of acres allowed; otherwise defendants deny each and every allegation contained in said Sub-paragraph (B).

[fol. 169] (c) Answering Sub-paragraph (C) of Paragraph IX of said petition, defendants admit that the Secretary found that the value of the land used and useful by petitioner in performing stock yard services is $647,547.84; otherwise defendants deny each and every allegation contained in said Sub-paragraph (C).

(d) Answering Sub-paragraph (D) of Paragraph IX of said petition, defendants deny each and every allegation contained therein. Defendants say, however, that petitioner owned 88.308 acres of land claimed by petitioner to be used and useful in the performance of stock yard services but found by the Secretary to be not used and useful in the performance of such services, and that the value of said 88.308 acres was not included by the Secretary in the rate base upon which the schedule of maximum reasonable rates and charges is predicated.

(e) Answering Sub-paragraph (E) of Paragraph IX of said petition, defendants admit that the Secretary found that the cost of reproduction new less depreciation of petitioner's used and useful structural property is $2,039,616. Defendants further admit that certain structural property owned by petitioner was found by the Secretary to be not used and useful for stock yard services and that such property included the building used for a stock yard hotel, the building wherein a harness shop is operated, the building wherein the stock yard journal is published and a garage and various and sundry other items of petitioner's structural property, and that the value of such structural property found by the Secretary to be not used and useful was excluded from the value of petitioner's property for rate making purposes. Except as herein expressly admitted, defendants deny each and every allegation contained in said Sub-paragraph (E).

(f) Answering Sub-paragraph (F) of Paragraph IX of said petition, defendants admit that the Secretary found [fol. 170] that no allowance should be made for pre-organization expenses and cost of financing; otherwise defendants deny each and every allegation contained in said Sub-paragraph (F).

(g) Answering Sub-paragraph (G) of Paragraph IX of said petition, defendants admit that the Secretary made no separate allowance for so-called going concern value, but defendants say that there is included in the rate base a substantial allowance for going concern value although the allowance for going concern value is not segregated and labelled as such. For a more complete statement of the treatment given by the Secretary to the element of so-called going concern value, defendants respectfully refer to Paragraphs 153 to 160 of the Secretary's order, which paragraphs contain the Secretary's findings with respect to going concern value. Defendants say that the Secretary's findings contained in said paragraphs of the order with respect to going concern value are supported by the evidence, and by the weight of the evidence. Except as herein expressly admitted, defendants deny each and every allegation contained in said Sub-paragraph (G).

(h) Answering Sub-paragraph (H) of Paragraph IX of said petition, defendants say that the Secretary allowed as a rate factor the sum of $80,000 to be included in petitioner's annual expenses to cover repairs and provide for a depreciation reserve, and that the Secretary found that the amount expended by petitioner on account of repairs on its used and useful property from 1922 to 1932, inclusive, averaged approximately $38,500 annually. Defendants say that if the same yearly average for repairs is maintained, petitioner, under the Secretary's order, will have available $41,500 as a depreciation reserve; and defendants say that the sum of $80,000 to cover repairs and depreciation reserve is adequate, and is supported by the evidence, and by [fol. 171] the weight of the evidence; otherwise defendants deny each and every allegation contained in said Sub-paragraph (H).

(i) Answering Sub-paragraph (I) of Paragraph IX of said petition, defendants say that the Secretary found that $302,500 was a reasonable amount to be considered as a rate factor for reasonable operating expenses other than taxes and provision for depreciation and repairs; that one of the factors considered in making such finding was the operating expenses (other than for taxes, repairs and depreciation reserve) which petitioner actually incurred in the respective years 1929 to 1932, inclusive; and that for each of said years the Secretary eliminated from considera-

tion expenses actually incurred but which for the reasons stated in the aforesaid Findings, Conclusion and Order he deemed improper for consideration in determining the reasonable operating expenses to be used as a rate factor. Defendants deny that the conclusion thus reached represents an average of expenses incurred over the period 1927 to 1932, or any other period, and say that it constitutes a normal drawn from the expenses incurred in each of the aforesaid years, viewed in the light of all of the facts and circumstances shown in the record; all of which is more fully shown by Paragraphs 181 to 193a of the aforesaid Findings, Conclusion and Order. Defendants admit that the valuation of petitioner's property for rate making purposes as found in said Findings, Conclusion and Order represents a spot value as of August 1, 1932, but deny that such spot value represents a value much lower than the average real and true value of petitioner's property during the years 1927 to 1932, inclusive. Defendants say that said spot value constitutes a true normal value as of August 1, 1932, without reflecting temporary conditions of depression or stagnation. Defendants admit that in finding cost of reproduction new less depreciation of petitioner's structural property the Secretary used spot prices as of August [fol. 172] 1, 1932; but deny that the average fair value of petitioner's structures during the years 1927 to 1932, inclusive, was greater than the value found for said structures by the Secretary as of August 1, 1932. Defendants say that the amount found by the Secretary as the cost of reproduction new less depreciation of petitioner's structural property constitutes a true normal of the cost thereof without reflecting temporary conditions of depression or stagnation. Except as herein expressly admitted, defendants deny each and every allegation of said Sub-paragraph (I)

(j) Answering Sub-paragraph (J) of Paragraph IX of said petition, defendants admit that the Secretary found that seven per cent is a reasonable rate of return to be used in the determination of reasonable rates to be charged by petitioner; otherwise defendants deny each and every allegation contained in said Sub-paragraph (J).

(k) Answering Sub-paragraph (K) of Paragraph IX of said petition, defendants admit that the Secretary found

that the reasonable net operating income of petitioner is $192,010 per annum. Defendants say that this amounts to seven per cent of the fair value of petitioner's used and useful property, which was found by the Secretary to be $2,743,000. Except as herein expressly admitted, defendants deny each and every allegation contained in said Sub-paragraph (K).

(l) Answering Sub-paragraph (L) of Paragraph IX of said petition, defendants admit that the rates and charges prescribed by the Secretary are based upon the assumption that petitioner will avail itself of the full maximum reasonable rates and charges permitted by the Secretary's order, which includes an allowance of one-half the regular yardage charge to be charged against traders and speculators on account of live stock resold or reweighed for purposes of sale. Defendants say that the Secretary's order does not require that petitioner collect the maximum rates and [fol. 173] charges found therein to be reasonable, but defendants say that the Secretary does have the power to prescribe reasonable and non-discriminatory rates and charges and to order that parties shall cease and desist from charging unreasonable and discriminatory rates. Except as herein expressly admitted, defendants deny each and every allegation contained in said Sub-paragraph (L).

(m) Answering Sub-paragraph (M) of Paragraph IX of said petition, defendants admit that the Secretary has found that the rates and charges now in effect for yardage are unjustly discriminatory because the shippers of live stock who consign their animals to commission men are charged by petitioner for the use of its facilities in handling such live stock for a shorter period of time than are those who use petitioner's facilities for a longer period of time. Defendants admit that the Secretary's order prescribed a schedule of maximum reasonable rates and charges, and that petitioner may charge less than the maximum if it so desires, and that under the order petitioner may continue to impose no yardage charge upon traders and speculators and non-compensatory yardage charges upon portions of feed lots, if petitioner so desires. Defendants say, however, that under the Secretary's order the shippers of live stock to the market will not be required to pay for the support of the traders and speculators and portions of feed lots if petitioner desires not to charge such

traders and speculators for services rendered to them, or for the use of portions of feed lots. Defendants admit that all unjust discriminations are forbidden by the Packers and Stockyards Act, 1921. Except as herein expressly admitted, defendants deny each and every allegation contained in said Sub-paragraph (M).

(n) Answering Sub-paragraph (N) of Paragraph IX of said petition, defendants admit that in Paragraph 207 of the Findings, Conclusion and Order the Secretary prescribes maximum reasonable rates and charges for various services rendered by petitioner in the operation of its stock [fol. 174] yards, said rates and charges varying in amounts according to the particular type of service rendered. Defendants further admit that said rates and charges prescribed by the Secretary constitute in some instances reductions in varying percentages from the rates and charges now made by petitioner, in other instances are the same as the rates and charges made by petitioner, and in other instances exceed the rates and charges now made by petitioner. Except as herein expressly admitted, defendants deny each and every allegation contained in said Sub-paragraph (N).

(o) Answering Sub-paragraph (O) of Paragraph IX of said petition, defendants admit that on February 2, 1934, petitioner filed with the Secretary a "Petition for Re-opening and Further Hearing" and that said petition, omitting the caption, is in words and figures as alleged and set forth in said Sub-paragraph (O). Defendants further admit that the Secretary, as part of his Findings, Conclusion and Order, denied said petition for re-opening. Defendants say that the hearing upon which the Findings, Conclusion and Order are based, was held beginning January 10, 1933, and concluding February 16, 1933, and that the findings of the Secretary are based upon the record made at said hearing and upon conditions which existed with respect to the business of the petitioner during a number of years prior to and including 1932. Defendants say that before denying said petition for re-opening the Secretary made an investigation of the allegations contained therein and concluded therefrom that re-opening and further hearing were not required nor justified. The reasons which prompted the Secretary to deny the petition for re-opening and further

hearing are set forth in Paragraphs 6c to 6h of the Secretary's Findings, Conclusion and Order. With respect to the allegation that the order prescribed by the Secretary is to become effective in June, 1934, defendants again refer to the order of the Secretary dated May 16, 1934, extending the effective date for the publication of a new schedule [fol. 175] until July 5, 1934. Defendants deny upon information and belief the allegation that the nature of the services rendered by petitioner in operating its public stock yards, and its income and expenses in connection therewith, have materially changed since the year 1932 and preceding years; that the net operating income of petitioner for the year 1933 was $179,823.82 or less than the reasonable net operating income which the Secretary found petitioner might reasonably earn as a fair return upon its property devoted to stock yard purposes. Except as herein expressly admitted or denied upon information and belief, defendants deny each and every allegation contained in said Sub-paragraph (O).

(p) Answering Sub-paragraph (P) of Paragraph IX of said petition, defendants admit that the Secretary found the fair value of petitioner's property used and useful in the rendition of stock yard services to be $2,743,000 and that a fair return thereon would be $192,010; otherwise defendants deny each and every allegation contained in said Sub-paragraph (P).

(q) Answering Sub-paragraph (Q) of Paragraph IX of said petition, defendants admit that if the order of the Secretary becomes effective and petitioner fails to comply therewith petitioner may be subject to prosecution and incur liability for penalties in amount of $500 per day as against which liability, if the order of the Secretary is not lawful, petitioner will have no adequate protection at law. Defendants say that if petitioner establishes the rates specified in the order of the Secretary it will not be permitted by law to collect rates in excess of those prescribed in the order. Defendants say that the allegation that the rates and charges prescribed in said order will reduce petitioner's revenues approximately $80,000 per year is incompetent, irrelevant and immaterial to the validity of the order and to this suit; nevertheless, defendants deny on information and belief that the substitution of the rates and charges

[fol. 176] specified in the order of the Secretary will result in reductions approximating $80,000 per year. Without specifically answering the remaining allegations of said Sub-paragraph (Q), defendants say that the matter of temporarily suspending the enforcement of the order of the Secretary pending final determination of its lawfulness, is set for hearing before this Court at Kansas City, Missouri, on June 9, 1934, and that the question of restraining or enjoining the enforcement of the order of the Secretary pending final determination will be separately dealt with at that hearing, and that the allegations with respect to matters to be dealt with at that hearing need be neither admitted nor denied.

7. Except as hereinbefore expressly admitted, defendants deny each and every allegation contained in said petition.

Wherefore, having fully answered, defendants pray that the petition be dismissed at the cost of the petitioner, and for the benefit of such other order or orders as the Court may deem appropriate.

Wendell Berge, Special Assistant to the Attorney General. Harold M. Stephens, Assistant Attorney General. Maurice M. Milligan, United States Attorney. J. S. Bohannan, Attorney, Department of Agriculture.

[File endorsement omitted.]

[fol. 177] In United States District Court

[Title omitted]

Memorandum as to Certain Corrections to be Noted in Exhibit "A" to Petition—Filed July 10, 1934

Come now the defendants in the above entitled cause and respectfully ask leave to file this memorandum with respect to certain corrections which ought to be noted in the copy of the Findings, Conclusion and Order contained as "Exhibit A" in the printed copies of the petition hereinbefore filed by petitioner with this court.

In Paragraph 2 of the answer hereinbefore filed by defendants the allegations of Paragraph V of said petition

were admitted, except that defendants said that Exhibit A, attached to said petition, was not a true and correct copy of the Findings, Conclusion and Order issued by the Secretary of Agriculture in Docket No. 298 on May 4, 1934, in that some substantial errors have been made in the printing thereof. Defendants said that they would later offer a memorandum to this court calling attention to such errors so that appropriate corrections might be made.

Defendants have checked word for word the printed copy of the Findings, Conclusion and Order attached as Exhibit A to the petition with the original Findings, Conclusion and Order issued by the Secretary. The following errors and corrections have been noted:

[fol. 178] On page 36 of Exhibit A, paragraph 51, in the fifth line, the words "of land" should be omitted.

On page 46 of Exhibit A, paragraph 70, in the sixth line, the word "deck" should be "dock."

On page 57 of Exhibit A, paragraph 91, in the sixth line, the word "data" should be "date."

On page 64 of Exhibit A, paragraph 99, in the first line the proper name "Frank N. Atkinson" should be "Frank M. Atkinson."

On page 86 of Exhibit A, paragraph 126, in the paragraph in the middle of the page consisting of a single sentence, the figures "$136,904" should be "$186,904."

On page 94 of Exhibit A, paragraph 135, in the eighth line, the word "or" should be "nor."

On page 104 of Exhibit A, paragraph 152, in the third line, between the words "on" and "of" there should be inserted the word "account."

On page 121 of Exhibit A, in the tenth line of the left-hand column of the table, the word "bearing" should be "hearing."

On page 130 of Exhibit A, paragraph 201, in the table at the conclusion of the paragraph, the figure given for hogs arriving by truck is 1,206,250 whereas it should be 1,306,250.

On page 131 of Exhibit A, paragraph 203, in the table at the conclusion of the paragraph, the number of bushels of corn for the year of 1929 is given as 123,387 whereas it should be 125,387.

Attention is called to all of the above errors for the sake of technical accuracy. The errors occurring on pages 130

and 131, in paragraphs 201 and 203, are, however, substantial.

Respectfully submitted, Wendell Berge, Special Assistant to the Attorney General. Harold M. Stephens, Assistant Attorney General. Maurice M. Milligan, United States Attorney.

[File endorsement omitted.]

[fol. 179] In United States District Court for the Western District of Missouri, St. Joseph Division

In Equity. No. 245

St. Joseph Stock Yards Company, Petitioner,

vs.

United States of America and Secretary of Agriculture, Defendants

Decree—Filed May 1, 1935

This case came on to be heard upon the bill and answer and the evidence introduced by the parties and was submitted and taken under advisement by the Court. And the Court, having duly considered the issues made by the pleadings, the evidence introduced, and the argument of counsel, being fully advised in the premises, and having filed herein its memorandum opinion and findings of fact,

It is ordered, adjudged and decreed as follows:

1. That the temporary injunction hereinbefore issued be and it is hereby dissolved;

2. That petitioner's bill be and it is hereby dismissed.

3. That the Court retain jurisdiction of this case for the purpose of determining any proceeding or proceedings to enforce the bond given by petitioner as security for the temporary injunction hereinbefore issued;

4. That the costs of this case be assessed against the petitioner.

May 1, 1935.

Kimbrough Stone, Circuit Judge. Albert L. Reeves, District Judge. Merrill E. Otis, District Judge.

[File endorsement omitted.]

[fol. 180] IN UNITED STATES DISTRICT COURT

[Title omitted]

ORDER STAYING DECREE—Filed May 9, 1935

Upon the suggestion of the petitioner and for the purpose of enabling petitioner to perfect its appeal and to petition the Court in connection therewith for a supersedeas as to the decree hereinbefore entered in this case:

It Is Ordered that the effective date of the decree be and it is suspended for thirty days from the date of this order.

Kimbrough Stone, Circuit Judge. Albert L. Reeves, District Judge. Merrill E. Otis, District Judge.

[File endorsement omitted.]

[fol. 181] IN UNITED STATES DISTRICT COURT

[Title omitted]

PETITION FOR SUPPLEMENTAL FINDINGS OF FACT AND CONCLUSIONS OF LAW—Filed May 24, 1935

Comes now the petitioner, by its solicitors, R. E. Culver, William N. Strack, and Ross Dean Rynder, and represents to the court that the memorandum opinion and findings of fact of the court in this proceeding, together with the final decree of this court, were entered herein May 1, 1935; that an order was entered May 9, 1935 by said court, staying the said decree for thirty (30) days, in order that petitioner might perfect its appeal to the Supreme Court of the United States; that petitioner is of the opinion that, in order to fully present its appeal to said Supreme Court, this court should either make or decline to make certain additional findings of fact and conclusions of law as of the day of the entry of the memorandum opinion and findings of fact and the decree herein. Counsel for petitioner, therefore, respectfully request the court to make the following supplemental findings of fact and conclusions of law, to be entered of record in this case nunc pro tunc as of the time of the filing of the memorandum opinion and findings of fact and [fol. 182] to become a part of the record in this case upon appeal.

Findings of Fact

1. The Secretary determined in his first decision herein, of July 20, 1931, that said Transit House is used and useful in connection with the operation of petitioner's stock yards.

2. The present use of the Transit House is the same as at the time of the first hearing in this case.

3. The Transit House is a proper convenience for truckers and shippers of live stock to petitioner's yards.

4. Petitioner's officers and directors have considered the Transit House to be a proper and necessary stockyards facility.

5. The value of Zone A of petitioner's property, as fixed by the Secretary, was less than its real and true value by at least $275,164.

6. The illegal use of 76.04 per cent as the average percentage condition of petitioner's structures caused the Secretary to arrive at a value of petitioner's structures of not less than $341,799 below its real and true value.

7. The record contains substantial evidence upon which petitioner's going concern value could be determined other than the testimony of witness Howson.

8. In his first decision in this proceeding, the Secretary found that petitioner had a going concern value of $300,000.

9. There is no evidence of record of any changed condition as to the existence of petitioner's going concern value.

[fol. 183] 10. The failure of the Secretary to allow petitioner anything for the item of going concern value caused him to arrive at a total value of petitioner's property which was at least $273,300 less than its true value.

11. The Secretary found that the cost of reproduction new of petitioner's used and useful structures, as of August 1, 1932, was $2,637,186.

12. The Government engineer who determined said value adopted by the Secretary computed the average composite life of petitioner's structures to be 24.8 years and the annual depreciation to be $113,492.

13. The amount of $41,500 allowed by the Secretary as a part of the annual operating expenses for a depreciation

reserve was less by $67,295 per year than it should have been.

14. The total value of petitioner's used and useful property, as fixed by the Secretary, was at least $1,010,406 less than its real and true value.

15. Petitioner's net operating income for rate making purposes for 1932, as modified by the Secretary, did not exceed $190,656.21, which was less than the fair return, as determined by the Secretary, of $192,010. Consequently, petitioner's rates and charges were not unreasonable in 1932, the last year included in the record before the Secretary.

16. It had been judicially determined in this proceeding that petitioner's rates and charges did not result in unreasonable income during 1930 and the first six months of 1931.

[fol. 184] 17. The evidence offered by the Secretary shows a constant diminution during the six-year period in all sources of petitioner's stockyard revenue, including receipts of live stock upon which yardage is charged, amount of revenue received from sales of feed, and amount of revenue received from miscellaneous stockyards operations.

18. There was no evidence in the record that petitioner's receipts of live stock and other items of income would increase in the future.

19. There was no evidence of record in the hearing before the Secretary upon the question of what increase, if any, might be made in petitioner's feed lot charges.

20. The estimated increase in income from petitioner's feed lot yardage charges was purely speculative and unsupported by any evidence.

21. There was no evidence before the Secretary to support his finding that petitioner would receive a gross income of $25,775 per year from resale and reweigh yardage charges.

22. The evidence shows that at the time of the hearing petitioner was applying a charge upon all live stock resold or reweighed for purpose of sale at its stock yards as great as that prescribed by the Secretary and that for the year 1932 it only produced $4,972.

[fol. 185] Conclusions of Law

1. In a case where rates and charges are prescribed by an administrative tribunal, such as the Secretary of Agriculture, and those rates are challenged by petitioner as being confiscatory, the petitioner is entitled to the independent judgment of the court upon the facts and the law as to whether such prescribed rates and charges amount to the taking of petitioner's property without due process of law.

2. The maintenance of the Transit House by petitioner is a question within the managerial discretion of petitioner's officers and directors.

3. There was no legal evidence in the record before the Secretary upon which to base the finding that petitioner's structures were in a condition of 76.04 per cent as compared with new.

4. Where the record shows that the business has a history of substantial earning capacity which will probably continue in the future, there is an element of value in such a plant over one not thus advanced, which is a property right and should be considered in determining the value of the property upon which the owner has a right to make a fair return; merely evaluating property as the sum of the bare value of the land, physical structures, and working capital, excludes such element of value.

5. The allowance for an annual depreciation reserve must be based upon present value.

6. The Secretary of Agriculture is not authorized by law to fix and determine the amount which petitioner should set aside annually for a depreciation reserve.

[fol. 186] 7. The Secretary is without authority to reduce petitioner's rates and charges when the record conclusively shows that they were not unreasonable at the time of the hearing.

8. In the absence of any evidence of record bearing upon the subject, the action of the Secretary in increasing petitioner's feed lot charges was arbitrary and void.

9. The finding by the Secretary that petitioner's feed lot charges were discriminatory required the Secretary to permit petitioner an alternative method of removing such discrimination; since the Secretary gave petitioner no such alternative, the Secretary's order is void.

R. E. Culver, William N. Strack, Ross Dean Rynder, Solicitors for Petitioner.

May 24, 1935.

[File endorsement omitted.]

[fol. 187] IN UNITED STATES DISTRICT COURT

[Title omitted]

ORDER PERMITTING FILING OF PETITION FOR SUPPLEMENTAL FINDINGS OF FACT AND CONCLUSIONS OF LAW BUT REFUSING TO MAKE SAID FINDINGS—Filed May 24, 1935

Under consideration of the petition for supplemental findings of fact and conclusions of law filed by the petitioner herein,

It is ordered

1. That said petition be filed in the record of this case as of May 1, 1935, and become a part of the record on appeal.

2. That each of said findings of fact and conclusions of law be considered refused as of May 1, 1935, and that petitioner be entitled to an exception as of that date.

—— ——, Circuit Judge. —— ——, District Judge.
—— ——, District Judge.

May 24, 1935.

[File endorsement omitted.]

[fol. 188] IN UNITED STATES DISTRICT COURT

[Title omitted]

NOTICE OF PETITION FOR APPEAL—Filed May 24, 1935

To Honorable Stanley F. Reed, Solicitor General of the United States, Washington, D. C.:

You are hereby notified that on the 24th day of May, 1935, at 1:30 o'clock p. m., or as soon thereafter as counsel can

be heard, we shall present to the Honorable Kimbrough Stone, United States Circuit Judge, and the Honorable Albert L. Reeves and Honorable Merrill E. Otis, United States District Judges, the petition of the petitioner herein for an appeal from the final order or decree made and entered in the District Court in the above entitled cause on the 1st day of May, 1935, to the Supreme Court of the United States; and ask that an order be entered herein allowing said appeal, making same returnable within thirty (30) days from May 24, 1935, and granting supersedeas [fols. 189-197] and stay of the order of the Secretary of Agriculture pending the determination of said appeal. A copy of said petition for appeal and of the assignment of errors therein referred to, a copy of the order allowing the appeal, and a copy of the order granting supersedeas and stay of the Secretary's order pending the determination of the appeal are attached hereto.

William N. Strack, Ross Dean Rynder, Solicitors for Petitioner.

May 21, 1935.

[File endorsement omitted.]

[fol. 198] IN UNITED STATES DISTRICT COURT

[Title omitted]

PETITION FOR APPEAL—Filed May 24, 1935

To the Honorable Judges of the District Court of the United States for the Western District of Missouri, St. Joseph Division:

Your petitioner, St. Joseph Stock Yards Company, respectfully shows:

That on, to wit, May 15, 1934, your petitioner, St. Joseph Stock Yards Company, filed in this court its petition in equity in this proceeding, for the purpose of suspending, enjoining, setting aside, and annulling a certain order issued by H. A. Wallace, Secretary of Agriculture, entered on the 4th day of May, 1934, in a proceeding before said Secretary, conducted by the Bureau of Animal Industry of the Department of Agriculture of the United States, en-

titled "In Re Secretary of Agriculture v. St. Joseph Stock Yards Company, docket no. 298"; that in said petition it was alleged in substance that said findings, conclusion and order of the Secretary were contrary to law, confiscatory of petitioner's property, and deprived petitioner of its property without due process of law, in violation of the fifth amendment to the Constitution of the United States, and that said findings, conclusion and order were, therefore, [fol. 199] void and of no effect; that in said petition it was prayed that this court issue a subpoena, directed to said defendants, the United States of America and the Secretary of Agriculture, requiring said defendants, on a day certain therein to be specified, to be and appear before this court and to answer said bill; that this court direct that due and proper notice of said petition and proceeding issue and be served forthwith, as prescribed in the Act of October 22, 1913 (28 U. S. C. A., secs. 41 (28) and 43 to 48, inclusive); that a court constituted as required by said act of October 22, 1913 (28 U. S. C. A., sec. 47) be convened, and that said court so constituted and convened should hear this petition upon due and legal notice to defendants; that the judge of this court should call to his assistance two other judges, one of whom should be a Circuit Judge, and that upon three days' notice to defendants, this court should enter its order staying and suspending the enforcement, operation, or execution of said order of said Secretary, and each and every part thereof, for sixty days from the date of said order; and that after five days' notice of the time and place of hearing having been given to the defendants, petitioner herein be granted a temporary injunction restraining the said Secretary from enforcement of said order of May 4, 1934; that, upon final hearing of this suit, the court should enter a decree permanently suspending, enjoining, setting aside, and annulling the said order of the Secretary; that petitioner should have and recover of the defendants the proper costs of this suit; and that the petitioner should have such other and further relief in the premises as to equity may appertain and as might be deemed by this court fit and proper.

[fol. 200] That thereupon the Honorable Merrill E. Otis, District Judge, called to his assistance the Honorable Kimbrough Stone, Circuit Judge, and the Honorable Albert L. Reeves, District Judge, in order to constitute a court

in accordance with the statute; that, on June 9, 1934, this cause came on to be heard before the United States District Court composed as aforesaid, and that the court thereupon heard counsel for the parties, and being duly advised in the premises, and petitioner having executed a bond as required by the court, said court ordered, adjudged and decreed that a temporary injunction be granted petitioner against said defendants, their respective agents, servants, and anyone acting by, through or for them, restraining them and each of them from enforcing or attempting to enforce said order promulgated by the Secretary of Agriculture, dated May 4, 1934, in a proceeding entitled "Secretary of Agriculture v. St. Joseph Stock Yards Company, docket no. 298", or from prosecuting petitioner for recovery of penalties or otherwise for failure to comply with the provisions of said order, pending the final hearing and final decision of this court thereon.

That thereafter on, to wit, May 1, 1935, said court announced its memorandum opinion and findings of fact in said proceeding, and that on, to wit, May 1, 1935, said court entered its final decree dissolving said temporary injunction of June 9, 1934, and thereafter extended the effective date of said decree until June 8, 1935.

That said final decree is greatly to the prejudice and injury of your petitioner and is erroneous and inequitable.

The errors upon which your petitioner claims to be entitled to an appeal are more fully set out in the assignment of errors and prayer for reversal, filed with the clerk pur- [fol. 201] suant to Rule 9 of the Rules of the United States Supreme Court; and there has been likewise filed herewith a statement as to the jurisdiction of the Supreme Court of the United States as provided by Rule 12 of the Rules of the United States Supreme Court.

Wherefore, in order that your petitioner may obtain relief in the premises and have opportunity to show the errors complained of, your petitioner prays for the allowance of an appeal in said cause to the Supreme Court of the United States agreeably to the statutes and rules of said court in such cases made and provided; and, desiring to supersede the execution of the decree, and to stay the operation of said order of the Secretary of May 4, 1934, pending this appeal and the determination of this appeal in the Supreme Court of the United States, petitioner here

tenders bond in such amount as the court may require for such purpose, and prays that with the allowance of the appeal a supersedeas be issued; and that a proper order touching the security required of the petitioner be made.

Dated May 24th, 1935, at Kansas City, Missouri.

R. E. Culver, William N. Strack, Ross Dean Rynder,
Solicitors for Petitioner.

[File endorsement omitted.]

[fol. 202] In United States District Court

[Title omitted]

Assignment of Errors—Filed May 24, 1935

And now, on this, the 24th day of May, A. D. 1935, comes the petitioner, by its solicitors, R. E. Culver, William N. Strack, and Ross Dean Rynder, and says that the decree entered in the above cause on the 1st day of May, A. D. 1935, is erroneous and unjust to the petitioner.

Application to Reopen

No. 1. Because the court erred in finding that the case should not have been reopened upon petitioner's application of February 2, 1934.

No. 2. Because the court erred in making the following finding:

"A comparison of these figures with those of actual receipts (page 157) for the six years, 1927-1932, inclusive, reveals that the Secretary's figures are very conservative. As to hogs, his figure is only 126,010 above the lowest receipt (in 1932) during the above six year period. In view of the above conservatism of the Secretary, it is by no means clear that such estimates are so far wrong as to be influenced materially by the operation of this Act.

Because of the speculative character as to the occurrence or permanency of the suggested action by the Secretary under the Act and because of the conservative estimate of volume of receipts used by the Secretary, we think this ground insufficient to warrant reopening of the case."

[fol. 203] No. 3. Because the court erred in the following finding:

"(4) As to the estimated effect of these rates if applied to 1933 business, the difference between the amount which is claimed would have been earned thereunder and the amount found by the Secretary to constitute the reasonable net return is too small to be taken as a guide for a rate."

Confiscation

No. 4. Because the court erred in finding that findings of fact made by the Secretary of Agriculture in a proceeding under the Packers and Stockyards Act are made conclusive by statute in confiscation cases.

No. 5. Because the court erred in holding that the findings of fact of the Secretary of Agriculture, if supported by substantial evidence, are conclusive upon the reviewing court in cases where the constitutional issue of confiscation is involved.

Transit House

No. 6. Because the court erred in its finding reading as follows:

"While the yards are some distance from the hotel section of the city proper, there is no sufficient showing of any reason why other hotels and lodging houses could not be used by those having business with the stock yards."

No. 7. Because the court erred in its finding reading as follows:

"It would have to be shown very clearly that the business of the yards would be materially affected by the absence of a nearby hotel before it could be said that the maintenance of such was so related to the yards business as to make it proper to be included in the rate for yard services. There is no such showing here and the exclusion thereof by the Secretary is sustained."

[fol. 204] No. 8. Because the court erred in failing to find that the maintenance of the Transit House is a question within the managerial discretion of petitioner's officers and directors.

No. 9. Because the court erred in failing to find that the Transit House was determined by the Secretary, in his first decision herein of July 20, 1931, to be used and useful in connection with the operation of petitioner's stock yards.

No. 10. Because the court erred in failing to find that the undisputed testimony on behalf of the Government and of petitioner shows that the present use of the Transit House is the same as at the time of the first hearing in this proceeding in 1929 and at the time of the Secretary's first decision herein of July 20, 1931.

No. 11. Because the court erred in failing to find that the Transit House is a proper convenience for truckers and shippers of live stock to petitioner's yards.

No. 12. Because the court erred in failing to find that the action of the Secretary, in excluding from petitioner's fair value the value of said Transit House, was arbitrary, and contrary to the evidence of record.

No. 13. Because the court erred in failing to weigh the evidence relating to the use and operation of the Transit House by petitioner and to give effect to the weight of such evidence.

No. 14. Because the court erred in failing to state and apply its own independent conclusions upon the facts of record bearing upon the question whether said Transit House is used and useful in connection with the operation of petitioner's stock yards.

[fol. 205] (2) Value of Land

No. 15. Because the court erred in its finding as follows:

"While petitioner contends that we should determine the issue *de novo,* we do not understand that to be our duty. In fact, we think we have no right or power so to act. The Congress has committed this issue of fact to the Secretary and our only duty is to keep his action within reasonable bounds—that is, to prevent it being arbitrary. This means that petitioner has the burden of showing that such action is clearly and convincingly wrong. Petitioner has failed to convince us to that effect."

No. 16. Because the court erred in failing to find that the value of Zone A of petitioner's property, as fixed by

the Secretary, was less than its real and true value by at least $275,164, and to that extent constituted confiscation of petitioner's property.

(4) Value of Structures

No. 17. Because the court erred in its finding as follows:

"Certainly this was a matter of judgment and it is not clearly shown that the results reached by the Secretary are erroneous."

No. 18. Because the court erred in failing to find that there was no legal evidence in the record before the Secretary tending to support the percentage of 76.04 as the average percentage condition of the structures used by petitioner in its stockyard services.

No. 19. Because the court erred in failing to find that such illegal use of said percentage condition of 76.04 per cent amounted to approximately $341,799 and to that extent constituted confiscation of petitioner's property.

[fol. 206] Exclusion of Going Concern Value

No. 20. Because the court erred in its finding as follows:

"The only evidence as to this element of value was by witness Howson (for petitioner)."

No. 21. Because the court erred in its finding as follows:

"In the end, this entire evidence of Howson is nothing more than an expert opinion resting upon rather shadowy bases of facts."

No. 22. Because the court erred in its finding as follows:

"Moreover, at least some of the elements considered by Howson seem to have been included in the valuation by the Secretary (see finding 136 which included such items as interest during construction ($125,106) and taxes during construction ($18,257)—possibly also, insurance during construction ($10,618, $46, and $485)."

No. 23. Because the court erred in its finding as follows:

"Even if there were grave doubt as to whether the Secretary had sufficiently included 'going concern' value, he can-

not be held clearly wrong in not accepting the above evidence as a basis for allowing such value and there was no other evidence upon which he could have acted."

No. 24. Because the court erred in failing to find that, because the Secretary allowed petitioner nothing for the item of going concern value, the total value fixed for petitioner's property was at least $273,300 less than its real and true value and to that extent constituted confiscation of petitioner's property.

(7) Depreciation Reserve.

No. 25. Because the court erred in its finding reading as follows:

[fol. 207] "That of Government witness Bachman shows great care to discover the elusive fact of what and where there was depreciation not taken care of by repairs and he pursued his investigation to great detail. Also, he thoroughly examined and analyzed the showing of the books of the company as to these items. We think the analysis of his and other testimony on this point in the Government's brief is very convincing."

No. 26. Because the court erred in its finding reading as follows:

"The findings of the Secretary show earnest study and consideration of the evidence and a very apparent attitude of fairness. We think the Secretary is fully sustained as to this matter. We are certain there is no clear showing he was not right."

No. 27. Because the court erred in failing to find, in connection with depreciation reserve, that the cost of reproduction new of petitioner's used and useful structures as of August 1, 1932, was $2,637,186.

No. 28. Because the court erred in failing to find that the average life of all of the structures used by petitioner for stockyards purposes was shown by the evidence of the Government engineer to be 24.8 years.

No. 29. Because the court erred in failing to find that, if the average life of petitioner's used and useful stock-

yards structures was 24.8 years, the annual depreciation therein was approximately $113,492.

No. 30. Because the court erred in failing to find that the annual depreciation allowance made by the Secretary of $41,500 for a depreciation reserve would require 63 years to equal the cost of reproduction new.

No. 31. Because the court erred in failing to find that the annual amount allowed by the Secretary for a depreciation reserve was less by $67,295 per year than the amount indicated as proper by Government exhibit 114.

[fol. 208] No. 32. Because the court erred in failing to find that the evidence justified the conclusion that the average annual depreciation of petitioner's stockyards property was at a rate of 3.77 per cent per annum, requiring an annual allowance of approximately $100,000.

No. 33. Because the court erred in failing to find that the allowance for an annual depreciation reserve must be based upon present value.

No. 34. Because the court erred in failing to find that the allowance for an annual depreciation reserve must be based upon a sum of money amounting to approximately $2,637,186 as of the time of the hearing.

No. 35. Because the court erred in failing to find that the amount allowed for an annual depreciation reserve by the Secretary, namely, $41,500, would have to earn a net return, after taxes, of 7 per cent per annum continuously, such interest to be compounded annually, in order to equal the cost of reproduction new of petitioner's stockyards structures during the life estimated by the Government engineer of 24.8 years.

No. 36. Because the court erred in failing to find that, even if the annual allowance for a depreciation reserve were to be invested and reinvested at 4 per cent simple interest, it would be necessary to increase the annual allowance for a depreciation reserve from $41,500 to $71,275 per year, or $29,775 in excess of the amount allowed by the Secretary.

No. 37. Because the court erred in failing to find that, in determining the amount of said annual allowance for a depreciation reserve, namely, $41,500, the Secretary was

[fol. 209] in fact fixing an allowance for a depreciation reserve in connection with a depreciated rate base.

No. 38. Because the court erred in failing to find that the Secretary was in fact, by means of the inadequate amount allowed for a depreciation reserve, fixing the annual allowance for a depreciation reserve upon a sinking fund compound interest method.

No. 39. Because the court erred in failing to find that a compound interest sinking fund method is improper except with an undepreciated rate base.

No. 40. Because the court erred in failing to find that, in using a depreciated rate base, it was improper for the Secretary to limit the amount to be allowed for a depreciation reserve to a sum which would have to be invested upon a compound interest sinking fund method in order to produce the value of the property within the period of its estimated life.

No. 41. Because the court erred in failing to find that the Secretary may not require petitioner to invest money for the purpose of earning a return on such investment to provide an adequate depreciation reserve.

No. 42. Because the court erred in failing to find that it would be impracticable to use a depreciation reserve in additions and improvements to petitioner's stockyards property or otherwise in the operation of petitioner's stockyards business.

No. 43. Because the court erred in failing to find that the Secretary is without authority to prescribe the method to be followed by petitioner in establishing and maintaining a depreciation reserve.

[fol. 210] No. 44. Because the court erred in failing to find that the experience of the company shows that the amounts heretofore set aside annually as specific depreciation reserves have not been excessive, but, on the other hand, have been inadequate.

No. 45. Because the court erred in failing to find that the evidence on behalf of petitioner established the necessity for an annual depreciation allowance of approximately $100,000.

No. 46. Because the court erred in failing to find that, if said annual allowance of $41,500 could be invested at compound interest on a 7 per cent basis or otherwise, the taxes upon the principal sums and the income therefrom would be so great as to render it impossible to accumulate the required amount during the average life of petitioner's stockyards property.

No. 47. Because the court erred in failing to find that the allowance by the Secretary of $41,500 annually for a depreciation reserve unlawfully deprives petitioner of approximately $58,500 of necessary operating income per year.

No. 48. Because the court erred in failing to find that, except for the inadequate amount allowed by the Secretary as an annual contribution to a depreciation reserve, no reductions could have been made in petitioner's stockyards rates and charges.

No. 49. Because the court erred in failing to state and apply its own independent conclusions upon the facts of record bearing upon the question of an adequate depreciation reserve.

[fol. 211] No. 50. Because the court erred in failing to find that the amount prescribed by the Secretary of $41,500, as an annual allowance for a depreciation reserve, results in confiscation of petitioner's stockyards property.

Rate Base Summary.

No. 51. Because the court erred in its finding that the value of petitioner's used and useful property was $2,753,000.

No. 52. Because the court erred in failing to find that the total value fixed by the Secretary for the used and useful property of petitioner was at least $1,010,406 less than its real and true value and to that extent constituted confiscation of petitioner's property.

Test Period.

No. 53. Because the court erred in finding that the rates and charges prescribed by the Secretary and the estimated receipts for the future were warranted by the six-year (1927-1932) study of petitioner's business.

No. 54. Because the court erred in failing to find that petitioner's net operating income for rate making purposes for 1932, the last year prior to the hearing, was less than a fair return.

No. 55. Because the court erred in failing to find that petitioner's net operating revenue for rate making purposes for the year 1932, the last year prior to the hearing, did not exceed $190,656.21.

No. 56. Because the court erred in failing to find that the fair return as determined by the Secretary, $192,010, was greater than the amount actually earned by petitioner in 1932.

[fol. 212] No. 57. Because the court erred in failing to find that during the six-year test period (1927-1932, inclusive) there was a constant diminution in the receipts of live stock at petitioner's yards and in its income from stockyard services.

No. 58. Because the court erred in failing to find, as had been previously judicially determined, that petitioner's rates and charges did not result in unreasonable income during 1930 and the first six months of 1931.

No. 59. Because the court erred in failing to find that during said test period there had been a constant diminution in the amount of feed sold by petitioner as a part of its stockyard services, so that petitioner's feed sales in 1932 were approximately $94,248 less than in 1928.

No. 60. Because the court erred in failing to find that the reduction of petitioner's rates by the Secretary was based upon an assumption by the Secretary that petitioner's receipts would increase over its receipts in 1932, notwithstanding the fact, of which the court should have taken judicial notice, that the Secretary had, prior to the issuance of his order, taken steps to definitely reduce the supply of live stock to be marketed at all markets, including petitioner's stock yards.

No. 61. Because the court erred in failing to find that the rates and charges prescribed by the Secretary would have reduced petitioner's net operating income for rate making purposes in 1932 by approximately $81,464.55, although

petitioner did not during said year earn the fair return of $192,010 determined by the Secretary.

[fol. 213] No. 62. Because the court erred in failing to find that the estimated receipts of live stock at petitioner's stock yards, upon which the Secretary based his rates and charges for the future, exceeded substantially the live stock receipts of petitioner for the year 1932.

No. 63. Because the court erred in failing to find that the revenue from miscellaneous charges estimated by the Secretary exceeded by substantial amounts the revenue received by petitioner in 1932.

No. 64. Because the court erred in failing to find that, on account of said errors in estimates made by the Secretary, the gross revenue estimated by the Secretary, as per paragraph 208 of the Secretary's decision, exceeded by approximately $110,000 the revenue which would actually have accrued in 1932 if the rates prescribed by the Secretary had been in effect.

No. 65. Because the court erred in failing to find that the findings of the Secretary respecting the volume of receipts used as a factor in constructing the prescribed rates and charges were contrary to the evidence and therefore void.

No. 66. Because the court erred in failing to find that petitioner's rates and charges in effect at the time of the hearing did not produce excessive or unreasonable income for the year 1932.

No. 67. Because the court erred in failing to find that petitioner's rates and charges did not produce excessive or unreasonable income in any one year or for the entire period of years 1927-1932, inclusive.

[fol. 214] No. 68. Because the court erred in failing to find that the evidence offered by the Secretary conclusively established the fact that petitioner's rates and charges and its income resulting therefrom were not unreasonable in 1932.

No. 69. Because the court erred in failing to find that the Secretary's findings and order as to estimated receipts of live stock, feed sales, total gross revenue, and net operating income were wholly hypothetical and speculative.

No. 70. Because the court erred in failing to find that the Secretary arbitrarily included in his estimate of petitioner's operating income $4,000 as profit from feed sold to and consumed by Anchor Serum Company on land excluded by the Secretary from the rate base, and to that extent constituted confiscation of petitioner's property.

No. 71. Because the court erred in failing to find that the Secretary was without authority to reduce petitioner's rates and charges for stockyard services because said charges were proved by the Secretary not to have been unreasonable at the time of the hearing.

No. 72. Because the court erred in failing to find that the specific rates and charges prescribed by the Secretary are not supported by any evidence of record in this case and therefore are arbitrary and void.

No. 73. Because the court erred in failing to find that the specific reductions in the rates and charges prescribed by the Secretary are arbitrary, based upon no evidence of record, and therefore void.

[fol. 215] Operating Expenses

No. 74. Because the court erred in finding, with respect to the elimination by the Secretary of certain of petitioner's operating expenses, that the reason given by the Secretary for each of these eliminations is satisfactory and supported by the evidence.

No. 75. Because the court erred in failing to find that the evidence of record does not justify the elimination from operating expenses made by the Secretary.

No. 76. Because the court erred in failing to find that the operating expenses of petitioner should have been increased so as to permit at least $100,000 per year for a depreciation reserve.

No. 77. Because the court erred in failing to find that the Secretary had allowed in operating expenses an inadequate amount for taxes and repairs.

Feed Lot Yardage Charge

No. 78. Because the court erred in its finding reading as follows:

"Petitioner's brief argues the above reasons quite ably but it seems to us that this argument is completely met by that in the brief of the Secretary (pp. 160–175). The evidence supports the position so stated by the Secretary."

No. 79. Because the court erred in failing to find that the findings of the Secretary with respect to feed lot yardage were arbitrary and void because not based upon any evidence of record.

No. 80. Because the court erred in failing to find that the income estimated by the Secretary to be received by petitioner from feed lot yardage charges was speculative, [fol. 216] hypothetical, based upon no evidence, and therefore void.

No. 81. Because the court erred in failing to find that, inasmuch as the Secretary's order with respect to feed lot yardage charges is based upon a finding of discrimination, the Secretary's order could only require removal of the discrimination, leaving to petitioner alternative methods of removing such discrimination.

No. 82. Because the court erred in failing to find that petitioner's feed lot yardage revenue, as estimated by the Secretary under the rates and charges prescribed by the Secretary, exceeded by approximately $14,000 the amount which would have been received by petitioner had such rates and charges been in effect in the year 1932 and been applied to the live stock which actually received feed lot yardage service.

No. 83. Because the court erred in failing to find that the estimate of the Secretary as to the amount of revenue to be received by petitioner from yardage upon shipments sold or reweighed for purpose of sale was without any support in the evidence and was therefore arbitrary and void.

No. 84. Because the court erred in failing to find that petitioner was already applying a yardage charge upon shipments resold or reweighed for purpose of sale substantially as great as that prescribed in the order of the Secretary.

No. 85. Because the court erred in failing to find that, in the estimate made by the Secretary, the Secretary predicted that petitioner would receive a gross income of $25,775 per year from resale and reweigh yardage charges.

[fol. 217] No. 86. Because the court erred in failing to find that the resale and reweigh yardage charges applied to petitioner's business in 1932 would not have exceeded $4,972.

No. 87. Because the court erred in failing to find that the Secretary erroneously estimated petitioner's income for future years by including therein estimated income from resale and reweigh yardage charges upon a much greater number of head of live stock than are subject to those charges at petitioner's stock yards.

Summary

No. 88. Because the court erred in failing to find that petitioner's net operating income for rate making purposes in 1932, based upon the revision in its operating expenses made by the Secretary, did not exceed $190,656.21.

No. 89. Because the court erred in failing to find that petitioner's net operating income for 1932 was less than the fair return as determined by the Secretary of Agriculture of $192,010.

No. 90. Because the court erred in failing to find that petitioner's net operating income for rate making purposes was not excessive in 1930 and 1931 and would have been much less than reasonable if the rates prescribed by the Secretary had been in effect.

No. 91. Because the court erred in failing to find that during the entire period 1927–1932, inclusive, and during each of said years, the net operating income earned by petitioner would have been much less than reasonable and would have been confiscatory if the rates prescribed by the Secretary had been in effect.

[fol. 218] No. 92. Because the court erred in failing to find that during the year immediately prior to the hearing (1932) the rates prescribed by the Secretary would have afforded petitioner a net operating income of only 3.9 per cent on the fair value of petitioner's property as determined by the Secretary.

No. 93. Because the court erred in failing to find that the decision and order of the Secretary would result in depriving petitioner of its property without due process of law in violation of the fifth amendment to the Constitution of the United States and in violation of the law of the land.

No. 94. Because the court erred in failing to find the facts, and to exercise its independent judgment upon the facts and the law, as they relate to (1) the application to reopen; (2) the Transit House; (3) value of land; (4) value of structures; (5) going concern value; (6) annual allowance for a depreciation reserve; (7) rate base summary; (8) test period; (9) receipts of live stock and net operating income for the year 1932 and for the period 1927–1932; (10) operating expenses; and (11) feed lot yardage charges.

No. 95. Because the court erred in entering its final decree herein of May 1, 1935, in which the court ordered, adjudged and decreed that the temporary injunction hereinbefore issued be dissolved; that petitioner's bill be dismissed; and that the costs of this case be assessed against petitioner.

[fol. 219] Conclusion

Wherefore petitioner prays that the said decree entered herein on May 1, 1935, be reversed and that said District Court of the United States for the Western District of Missouri, St. Joseph Division, be directed to enter a decree granting the petition of petitioner in said court, and that said order of the Secretary of Agriculture of May 4, 1934, be declared void and perpetually set aside, suspended, and annulled, and that your petitioner be granted such other and further relief as may be appropriate.

R. E. Culver, William N. Strack, Ross Dean Rynder,
Solicitors for Petitioner.

[File endorsement omitted.]

[fol. 220] In United States District Court

[Title omitted]

Order Allowing Appeal—Filed May 24, 1935

The petition of St. Joseph Stock Yards Company, the petitioner in the above entitled cause, for an appeal in the

above entitled cause to the Supreme Court of the United States from the decree of the District Court of the United States for the Western District of Missouri, St. Joseph Division, having been filed herein, accompanied by an assignment of errors and statement as to jurisdiction, all as provided by rules 9 and 12 of the Rules of the United States Supreme Court, and the said papers having been presented to this court and the record in this cause having been considered;

It is hereby ordered that an appeal be and it is hereby allowed to the Supreme Court of the United States from the final decree of the District Court of the United States for the Western District of Missouri, St. Joseph Division, entered in this cause on the 1st day of May, 1935, and suspended until thirty (30) days from May 9, 1935; and that the Clerk of the said District Court of the United States for the Western District of Missouri, St. Joseph [fol. 221] Division, shall, within thirty (30) days from this date, make and transmit to the Supreme Court of the United States, under his hand and the seal of the Court, a true copy of the material parts of the record herein, which shall be designated by praecipe or a stipulation of the parties or their counsel herein, all in accordance with rule 10 of the Rules of the Supreme Court of the United States.

It is further ordered that said appellant shall give a good and sufficient cost bond in the sum of Five Hundred Dollars ($500.00), conditioned as required by law.

Done by the Court this 24th day of May, 1935.

Kimbrough Stone, Circuit Judge. Albert L. Reeves, District Judge. Merrill E. Otis, District Judge.

[File endorsement omitted.]

[fol. 222] IN UNITED STATES DISTRICT COURT

[Title omitted]

ORDER GRANTING SUPERSEDEAS—Filed May 24, 1935

This cause coming on to be heard upon the petition of the St. Joseph Stock Yards Company herein for allowance of an appeal to the Supreme Court of the United States

from the final decree entered herein by this court on May 1, 1935, and upon the petition of said St. Joseph Stock Yards Company to supersede the execution of the decree and to stay the order of the Secretary of Agriculture of May 4, 1934 in the proceeding known before said Secretary as "docket no. 298, In re Secretary of Agriculture v. St. Joseph Stock Yards Company," pending appeal to the Supreme Court of the United States and the determination of said appeal in said court, it is

Ordered that the enforcement, operation, and execution of said order of the Secretary of Agriculture, entered on May 4, 1934, and of the final decree of this court herein, entered on May 1, 1935, be and they are hereby stayed during the pendency and until the determination of said appeal by the Supreme Court of the United States, upon condition that appellant (petitioner) file herein a bond in the sum of [fol. 223] Two Hundred Thousand Dollars ($200,000), the obligee in said bond to be the Secretary of Agriculture for the use and benefit of such persons, who, if the order of the Secretary of Agriculture, dated May 4, 1934, be sustained by the decision of the Supreme Court of the United States herein upon appeal, shall, as a result of the temporary injunction heretofore entered in this cause, and of this stay pending appeal, have paid to the petitioner for stockyard services, including charges for feed and feeding at petitioner's stock yards, rates and charges in excess of those fixed and found reasonable in the aforesaid order of the Secretary of Agriculture.

It is further ordered that the aforesaid bond shall be conditioned that appellant (petitioner) will prosecute its appeal with effect and shall pay or cause to be paid all net amounts which may be due from it to the Secretary of Agriculture or said other persons, or any of them, during the period July 15, 1934 until the decision of the Supreme Court of the United States on the appeal taken herein under the order entered by said Secretary of Agriculture on May 4, 1934 and said final decree of this court entered on May 1, 1935.

Kimbrough Stone, Circuit Judge. Albert L. Reeves, District Judge. Merrill E. Otis, District Judge.

May 24, 1935.

[File endorsement omitted.]

[fols. 224 & 225] Cost bond on appeal for $500.00, approved and filed May 24, 1935, omitted in printing.

[fols. 226-233] Supersedeas bond on appeal for $200,000, approved and filed May 24, 1935, omitted in printing.

[fols. 234–237] Citation, in usual form, omitted in printing.

[fols. 238-244] IN UNITED STATES DISTRICT COURT

LETTER—Filed July 1, 1935

United States District Court, Western District of Missouri, Kansas City

Merrill E. Otis, District Judge

June 20, 1935.

Mr. Ross Dean Rynder, 4015 Packers Avenue, Chicago, Illinois.

DEAR MR. RYNDER:

I return herewith the petition for supplemental findings of fact and conclusions of law in the St. Joseph Stock Yards Company case, together with the form of order which you left with me. The Court does not believe that the order asked by you should be made.

Very truly yours, (Sgd.) Merrill E. Otis.

[File endorsement omitted.]

[fol. 245] IN UNITED STATES DISTRICT COURT

[Title omitted]

NOTICE OF NARRATIVE STATEMENT OF EVIDENCE, ETC.—Filed Sept. 26, 1935

To United States of America and Secretary of Agriculture, defendants herein:

Please take notice that petitioner (appellant in the above cause) has lodged in the Clerk's office of the United States

District Court for the Western District of Missouri, St. Joseph Division, at St. Joseph, Mo., for the examination of the parties hereto, the narrative statement of evidence to be included in the transcript of record on appeal to the Supreme Court of the United States from the final decree entered in the above proceeding on May 1, 1935, said narrative statement of evidence being in accordance with a stipulation of counsel for petitioner (appellant) and counsel for the United States of America and the Secretary of Agriculture, dated September 11, 1935, and a stipulation supplemental thereto, dated September 18, 1935.

Further please take notice that on the 26th day of September, 1935, at 10:00 o'clock a. m., or as soon thereafter as counsel can be heard, at the court room of said United States District Court in the Federal Building in the City of Kansas City, Mo., petitioner (appellant) will move the court to enter an order (copy of which is hereto attached) approving said narrative statement of evidence, and provid-
[fol. 246] ing for the certification to the Supreme Court of the United States of certain of the original exhibits filed upon the trial of said cause in said District Court, said exhibits to be certified and forwarded by the Clerk of the District Court to the Supreme Court of the United States as original exhibits, not as part of the transcript of record but separately therefrom.

R. E. Culver, Wm. N. Strack, R. D. Rynder, Counsel for Petitioner.

Service of the foregoing notice and order therein referred to and receipt of a copy thereof are admitted by the undersigned this 18th day of September, 1935, who assent to the entry of said order hereto attached.

Hugh B. Cox, Counsel for the United States of America and Secretary of Agriculture.

[File endorsement omitted.]

[fol. 247] IN UNITED STATES DISTRICT COURT

[Title omitted]

ORDER APPROVING NARRATIVE STATEMENT OF EVIDENCE

This cause coming on for hearing on the motion of petitioner (appellant) for an order approving the narrative

statement of evidence filed herein and certifying original exhibits to the Supreme Court of the United States, and the court being advised in the premises, it is

Ordered:

1. That the narrative statement of evidence filed herein, and which, with the original exhibits offered in evidence and to be certified separately to the Supreme Court of the United States, is a true and complete statement of all the evidence which is essential to the decision of the questions presented by the appeal, be and it is hereby approved.

2. That the Clerk of this court, in preparing the transcript of the record on the appeal herein to the Supreme Court of the United States, shall certify to said court all of the condensed narrative statement of evidence and the exhibits specified in the stipulation of counsel herein; that said exhibits shall be certified and forwarded by the Clerk of this court to the Supreme Court of the United States as original exhibits, not as part of the transcript of record but [fol. 248] separately therefrom, and that any party hereto may refer to said original exhibits in their briefs and arguments with like effect as though they were printed as part of the record.

—— ——, United States Circuit Judge. —— ——, United States District Judge. —— ——, United States District Judge.

September —, 1935.

[fol. 249] [File endorsement omitted]

[fol. 250] IN UNITED STATES DISTRICT COURT

[Title omitted]

STIPULATION CONCERNING CONDENSED NARRATIVE STATEMENT OF RECORD AND ORIGINAL EXHIBITS TO BE TRANSMITTED TO THE UNITED STATES SUPREME COURT

On the hearing of petitioner's application for a permanent injunction, petitioner offered in evidence a condensed narrative of the transcript of evidence and proceedings had before the Secretary of Agriculture, at the hearing held at

St. Joseph, Mo., December 2 to 17, 1929, in a proceeding entitled "Before the Secretary of Agriculture, Bureau of Animal Industry, in re Secretary of Agriculture vs. St. Joseph Stock Yards Company, respondent, docket No. 298"; said condensed narrative of the transcript of the evidence of said hearing having been stipulated by counsel for petitioner and defendants to be a fair and satisfactory abstract of the evidence introduced at the above entitled hearing. At said hearing on the application for a permanent injunction, petitioner also introduced in evidence a fully copy of the transcript of the record of the evidence and proceedings before the Secretary of Agriculture at the further hearing in said proceeding, entitled "Before the Secretary of Agriculture, Bureau of Animal Industry, in re Secretary of Agriculture vs. St. Joseph Stock Yards Company, respond- [fol. 251] ent, docket No. 298"; said hearing being the second hearing in said proceeding, held at St. Joseph, Mo., January 10 to February 16, 1933. At said hearing on the application for a permanent injunction, petitioner also offered in evidence a condensed narrative of the transcript of the evidence and proceedings before the Secretary of Agriculture at said second hearing, January 10 to February 16, 1933, consisting of two volumes which were stipulated by counsel for the Secretary of Agriculture and for petitioner to be a fair and satisfactory abstract of the evidence introduced in the rehearing of the above entitled proceeding on January 10 to February 16, 1933. The condensed narrative statement, hereinabove referred to, of the evidence upon said first hearing, December 2 to 17, 1929, is entitled "Abstract of Record. Hearing held at St. Joseph, Mo., December 2 to 17, 1929" and consists of 548 printed pages. The condensed narrative statement, hereinabove referred to, of the further hearing in this proceeding before the Secretary of Agriculture is entitled "Abstract of Record. Rehearing held at St. Joseph, Mo., January 10 to February 16, 1933" and consists of one volume, containing the testimony on behalf of the Government, and a second volume, containing the testimony on behalf of the petitioner, consisting of approximately 1,101 pages.

It is now hereby stipulated, by and between counsel for petitioner and counsel for the United States and the Department of Agriculture, that said three printed volumes, containing a condensed narrative of the transcript of the

evidence and proceedings in said hearings, shall be substituted for the original transcript of the oral testimony offered in evidence before the United States District Court for the Western District of Missouri, St. Joseph Division, and shall be incorporated in the record on appeal and shall [fol. 252] have the same force and effect upon the appeal as the original testimony.

It is further stipulated that, in preparing, certifying, and transmitting the transcript of the record to the Supreme Court of the United States, the Clerk of the United States District Court for the Western District of Missouri, St. Joseph Division, shall certify to the Supreme Court of the United States, for printing as the record on appeal, the following pages of said printed volumes of condensed narrative of the transcript:

Abstract of Record. Hearing at St. Joseph, Mo., December 2 to 17, 1929

Pages 1 and 2 and the first paragraph on page 3, concluding with the words "were present by counsel."

That portion of page 13 commencing with the caption "Land Appraisal by Government" and continuing through page 14 to and including the words "the report," in the third line from the bottom of the page.

That portion of page 16 commencing with the words "Government Exhibit 4—L" in the eighth line thereof, and continuing through the third paragraph on page 24 ending with the words "in this proceeding (T. 47)."

Pages 25-32, inclusive, and to the end of the sixth line on page 33.

Page 37, commencing with the caption "Redirect Examination", to and including page 50 to the end of the first paragraph thereof, ending with the words "Mr. Henrici (T, 106)."

Page 58, commencing with the last paragraph thereon carrying the caption "Transit House", and continuing through page 59, including the fourth line from the bottom ending with the words "many years ago."

Page 67, commencing with "Mr. F. W. Mollin, a witness called by the Government," and continuing through page 68 to the end of the first paragraph thereon, concluding with the words "at those points (T. 145)."

Page 73, commencing with the caption "Stock Yard Hotels" and continuing through the first paragraph on page 74 concluding with the words "around midnight."

[fol. 253] Page 104, commencing with the caption "Reproduction New and Less Depreciation" and continuing through the last line of the first paragraph on page 107 ending with the words "time being (T. 235)."

Page 107, that portion at the bottom of the page commencing with the caption "Condition Per Cent" and continuing through the first paragraph on page 109 ending with the words "condition per cent (T. 237)."

Page 111, that portion of the first paragraph commencing with the caption "Audit of Respondent's Records" and ending with the words "position is recognized."

Page 111, that portion at the bottom of the page commencing with the words "H. E. Bufkin, a witness called by the Government," and continuing through page 127 to the end of the first paragraph thereon, ending with the words "since that time (T. 278)."

Page 131, that portion of said page commencing with the caption "Probable Receipts at River Markets; Effect of Divergent Rates at Those Markets; Advisability of Stockyards Hotels" and continuing through page 137 to the end of the first paragraph thereon, ending with the words "resell on the market (T. 494)."

Page 138, commencing with the caption "Evidence offered by Respondent" and continuing to the end of page 139.

Page 147, that portion commencing with the caption "Transit House" and continuing through page 149 to the end of the first paragraph thereof, ending with the words "upon other elements (T. 312)."

Page 153, commencing with the caption "Land—Respondent's Appraisal" and continuing through to the end of page 176.

Page 179, commencing with the caption "Cross-Examination" and continuing through to the end of the first paragraph on page 186, ending with the words "ordinary business transaction (T. 377)."

Page 186, commencing in the second paragraph with the words "I did not state that zones A and B are all of the same basic character as to value" and continuing through to the end of the first paragraph on page 188, ending with the words "15¢ per square foot."

Page 189, commencing with the second paragraph thereon and continuing through to the end of the second paragraph on page 194, ending with the words "as above quoted."

Page 194, commencing with the words "Frank M. Atkinson, being first duly sworn, testified in substance as follows:" and continuing through the end of the 19th line on page 200, ending with the words "and terrible."

[fol. 254] Page 200, commencing with the last paragraph on said page and continuing through to the end of the third paragraph on page 201, ending with the words "we do not."

Page 224, commencing with the caption "Used and Useful Property" and ending with the next to the last paragraph which concludes with the words "outside facilities."

Page 237, that portion commencing with the words "Zone 1, Transit House" and continuing through to the end of the first paragraph on page 239, ending with the words "taken care of."

Page 276, commencing with the caption "Transit House" and continuing through the first paragraph on page 278, ending with the words "Transit House."

Page 283, commencing with the caption "Going Concern Value" and continuing through to the end of the third paragraph on page 358, ending with the words "science of mathematics."

Page 359, commencing with the caption "Depreciation Reserve" and continuing through to the end of the second paragraph on page 399, ending with the words "that used it (T. 798)."

Page 400, commencing with the caption "Redirect Examination" and continuing through the second paragraph on page 403, ending with the words "in the future."

Page 467, commencing with the caption "Income for Rate Making Purposes" and continuing through to the end of the third paragraph on page 473, concluding with the words "five-year average (T. 1096)"

Page 493, commencing with the caption "Used and Useful Property" and continuing through to the end of the second paragraph on page 498, concluding with the words "see it abolished."

Page 499, the three lines reading as follows: "S. F. Kosters, upon being recalled by Respondent, testified in substance as follows: Direct Examination."

Page 502, that portion commencing with the caption "Used and Useful Property" and continuing through to the end of the second line on page 503, concluding with the words "enforced (T. 1161)."

Page 507, that portion commencing with the caption "Going Concern Value" and continuing through to the end of the first paragraph on page 509, concluding with the words "period in 1928."

Page 515, commencing with the words "Cross-Examination" and continuing through to the end of the second paragraph on page 519, concluding with the words "near the stockyards."

[fol. 255] Page 529, commencing with the words "Mr. Hermann C. Henrici" and ending with the words "Direct Examination."

Page 530, commencing with the caption "Going Concern Value" and continuing through page 532 to and including the caption "Cross-Examination."

Page 533, through the first paragraph on page 537, ending with the words "pen areas and paving (T. 1219)."

Page 538, commencing with the caption "Going Concern Value" and continuing through to the end of the first four lines on page 540, ending with the words "into them."

Page 542, commencing with the caption "Surrebuttal Testimony of Respondent" and continuing through to the end of page 548.

Abstract of Record. Hearing at St. Joseph, Mo., January 10 to February 16, 1933, Volume 1.

Page 1, commencing with the words "The following is a copy" and continuing through the numbered paragraphs on page 9, ending with the words "privilege of the yards."

Page 12, commencing with the caption "Used and Useful Property" and continuing to the end of the second paragraph on page 14, concluding with the words "operating units, etc."

Page 28, commencing with the caption "Feedlots" and continuing through and including the first paragraph on page 30, ending with the words "be operated (T. 86)."

Page 43, commencing with the caption "Feedlots" through and including the first paragraph on page 45, ending with the words "by respondent (T. 126)."

Page 48, commencing with the caption "Feedlots" and continuing to the end of the first paragraph on page 49, concluding with the words "other feedlots (T. 136)."

Page 50, commencing with the caption "Feedlots" and continuing through to the end of the first paragraph on page 51, concluding with the words "stockyard service (T. 146)."

Page 53, commencing with the caption "Feedlots" and continuing through to the end of the first paragraph on page 54, ending with the words "held for shipment (T. 152)."

[fol. 256] Page 54, commencing with the caption "Transit House" and continuing through to the end of the first paragraph on page 55, concluding with the words "hotel proprietor (T. 155)."

Page 57, commencing with the second paragraph beginning with the words "The witness" and continuing through to the end of the third paragraph, concluding with the words "expansion land (T. 162)."

Page 58, commencing with the caption "Cross-Examination" immediately preceding the last paragraph on the page, through the first paragraph on page 61, ending with the words "inclusive (T. 175)."

Page 62, commencing with the caption "Traders and Speculators" and continuing through to the end of the first paragraph on page 63, ending with the words "it to be (T. 182)."

Page 100, commencing with the caption "Anchor Serum Company" and continuing through the eighth line from the bottom, including the words "former decision (T. 303)."

Page 123, commencing with the caption "Feedlots" and continuing through the second paragraph on page 131, concluding with the words "Mr. Black told me (T. 390)."

Page 133, commencing with the caption "Feedlots" and continuing to the end of said page.

Page 136, commencing with the caption "Transit House" and continuing through the second paragraph on page 137, ending with the words "collected (T. 405)."

Page 139, commencing with the caption "Re-cross Examination" to the end of said paragraph, concluding with the words "matter of practice (T. 413)."

Page 142, commencing with the words "Mr. Herman C. Henrici" and ending with the caption "Direct Examination."

Page 144, commencing with the caption "Cost of Reproduction Less Depreciation" and continuing through page 156 to the end of the first paragraph, concluding with the words "five years ago (T. 465)."

Page 164, commencing with the caption "Depreciation Reserve" and continuing through the caption "Cross-Examination" on page 170.

Page 173, commencing with the caption "Unit Prices" and continuing to the end of the first paragraph on page 178, ending with the words "this same method."

[fol. 257] Page 179, commencing with the caption "Depreciation Reserve" and continuing to the end of the first paragraph on page 180, concluding with the words "August 1, 1932."

Page 181, commencing with the words "I stated that" in the sixth line from the bottom of the page, and continuing through to the end of the second paragraph on page 183, concluding with the words "my 1929 appraisal."

Page 183, commencing with the caption "Audit Prepared by Government Accountants" and continuing through to the end of the first paragraph on page 189, concluding with the words "data which I had."

Page 192, commencing with the caption "Income for Rate-making Purposes" through to the end of the first paragraph on page 193, ending with the words "was not paid."

Page 195, commencing with the caption "Taxes" and continuing through to the end of the page.

Page 197, commencing with the caption "Repairs" and continuing through the caption "Cross-Examination" on page 215.

Page 217, commencing with the caption "Feedlots" and continuing through to the end of the second paragraph on page 218, concluding with the words " 'Feeding Facilities Yardage' (T. 636)."

Page 220, commencing with the caption "Feedlots" and continuing through the single paragraph thereunder, ending with the words "shown as rental."

Page 224, commencing with the caption "Allocation of Maintenance, Repairs and Other Expenses" and continuing through to the end of page 226.

Page 235, commencing with the words "H. E. Bufkin, a witness previously called by the Government" and continuing through the caption "Cross-Examination" on page 237.

Page 245, commencing with the caption "Depreciation Reserve" and continuing through to the end of the first paragraph on page 252, concluding with the words "to do so (T. 736)."

Page 313, all of said page and continuing through to the end of page 334.

Page 337, all of said page and continuing through to the end of the second line on page 437 reading as follows: "account alone (T. 1307)."

[fol. 258] Page 439, commencing with the caption "Traders and Speculators" and continuing through to the end of the first paragraph at the top of page 442, concluding with the words "as follows:"

Page 444, commencing with the caption "Depreciation Reserve" and continuing through to the end of the table on page 450.

Page 451, commencing with the caption "Depreciation Reserve" and continuing through to the end of the first paragraph on page 453, ending with the words "those securities (T. 1340)."

Abstract of Record. Hearing at St. Joseph, Mo., January 10 to February 16, 1933, Volume 2.

Page 455 to the end of the first paragraph on page 458, concluding with the words "Columbia Utilities Commission."

Page 461, commencing with the caption "Depreciation" and continuing to the end of page 466.

Page 478, commencing with the caption "Land Values" and continuing to the end of the first paragraph on page 498, concluding with the words "mind immediately (T. 1457)."

Page 525, commencing with the caption "Depreciation" and continuing through to the end of the first paragraph on page 538, concluding with the words "the approach (T. 1556)."

Page 539, commencing with the caption "Land Values" and continuing through the caption "Redirect Examination" on page 550.

Page 552, commencing with the caption "Depreciation" and continuing to the end of the second paragraph on page 557, concluding with the words "a few hours."

Page 562, commencing with the caption "Cost of Reproduction Less Depreciation" and continuing to the end of page 629.

Page 633 and continuing to the end of page 749.

Page 753 and continuing to the end of line 27 on page 782, concluding with the words "further cross examine."

Page 783, commencing with the caption "Redirect Examination" and continuing through to the end of page 793.

[fol. 259] Page 797 and continuing through page 813 to the end of the sentence concluding "cooperating with them."

Page 845, commencing with the caption "Feedlots" and continuing through to the end of the first paragraph on page 846, concluding with the words "specific animal (T. 2227)."

Page 872, commencing with the caption "Baby Beef and Pig Club" and ending with the second paragraph on said page, concluding with the words "property used."

Page 877, commencing with the caption "Sale of Feed" and continuing through to the end of the first paragraph on page 878, concluding with the words "rail and truck."

Page 884, commencing with the caption "Feedlots" and continuing to the end of the page.

Page 886, commencing with "C. F. Topping, a witness called by respondent" and continuing to the end of the third paragraph on page 891, concluding with the words "this alley."

Page 906, commencing with the caption "Anchor Serum Company" and continuing through to the end of the first paragraph on page 908, concluding with the words "Serum Company (T. 2384)."

Page 911, commencing with the caption "Zone 1" and continuing through to the end of the first paragraph on page 912, concluding with the words "non-used and useful."

Page 912, commencing with the caption "Zone 2" and continuing through to the end of the first paragraph on page 913, concluding with the words "the year 1932."

Page 913, commencing with the caption "Baby Beef and Pig Club Show" and continuing through to the end of the first paragraph on page 915, ending with the words "the year 1932."

Page 922, commencing with the caption "Income for Rate-making Purposes" and continuing to the end of the first paragraph on page 923, concluding with the words "in his testimony (T. 2425)."

Page 935, commencing with the caption "Cross-Examination" and continuing to the end of the first paragraph on page 948, concluding with the words "as public markets."

Page 963, commencing with the caption "Feedlots" and continuing to the end of page 973.

Page 983, commencing with the caption "Transit House" and continuing to the end of the first paragraph on page 987, concluding with the words "rate base."

[fol. 260] Page 1001, commencing with the caption "Redirect Examination" and continuing to the end of the second paragraph on page 1003, concluding with the words "in those facilities."

Page 1005, commencing with the caption "Anchor Serum Company" and continuing to the end of the second paragraph on said page, ending with the words "21 per cent."

Page 1006, commencing with the caption "Transit House" and continuing to the end of the following paragraph, concluding with the words "ever came here."

Page 1019, commencing with the caption "Going Concern Value" and continuing through page 1039 to the end of the sentence in the sixteenth line concluding with the words "experience of 22 years."

Page 1042, commencing with the caption "Income for Rate-making Purposes" and continuing to the end of the table on page 1044.

Page 1046, commencing with the caption "Change in Conditions Affecting Income" and continuing to the end of the second paragraph on page 1051, concluding with the words "rail to truck (T. 2730)."

Page 1052, commencing with the caption "Land Values" and continuing to the end of the following paragraph which concludes with the words "credit was made."

Page 1052, commencing with the caption "Cross-Examination" and continuing to the end of the first paragraph on page 1053, concluding with the words "assistant treasurer (T. 2736)."

Page 1062, commencing with the caption "Income for Rate-making Purposes" and continuing to the end of the second paragraph on page 1064 which concludes with the words "spread were applied (T. 2770)."

Page 1065 to the end of the first paragraph on page 1083, concluding with the words "Chicago, Illinois."

Page 1083, commencing with the caption "Land Values" and continuing to the end of the second paragraph on page 1092, concluding with the words "less rocky formation."

Page 1092, commencing with the caption "Redirect Examination" and continuing to the end of the next to the last paragraph on page 1093, concluding with the words "Railway Company."

Page 1094, commencing with the caption "Surrebuttal Testimony of Respondent" and continuing to the end of page 1101.

[fol. 261] The portions of the narrative statement not to be printed by the Clerk of the United States Supreme Court have been deleted with red pencil in the three volumes referred to in this stipulation and which are hereto attached and made a part hereof.

It is hereby stipulated that the Clerk of this court, in preparing the transcript of record on appeal in the above entitled cause to the Supreme Court of the United States, shall certify to said court certain original exhibits which were offered in evidence upon the hearing of the application for a permanent injunction herein; that said exhibits and other documents so attached to said condensed narrative of the abstract of evidence shall be certified and forwarded by the Clerk of this court to the Supreme Court of the United States as original exhibits, not as part of the transcript of record but separately therefrom, and that any party hereto may refer to said original exhibits and other documents in their briefs and oral arguments with like effect as though they were printed parts of the record; said exhibits to be so certified by the Clerk of this court to the Supreme Court of the United States as original exhibits,

and not as a part of the transcript of the record, bear the following numbers:

Government Exhibit No. 103.
" " " 104.
" " " 105
" " " 106.
" " " 107.
" " " 107-A.
" " " 108.
" " " 109.
" " " 110.
" " " 111.
" " " 114.
" " " 118.
" " " 121-A.
" " " 121-B.
" " " 121-C.
[fol. 262] " " " 122.
" " " 128.
" " " 129.
" " " 130.
" " " 131.
" " " 132.
" " " 133.
" " " 134.
" " " 135.
" " " 142.

Respondent's Exhibit No. 101.
" " " 102.
" " " 103.
" " " 104.
" " " 105.
" " " 106.
" " " 107.
" " " 108.
" " " 109.
" " " 110.
" " " 111.
" " " 111-A.
" " " 113.
" " " 114.

Respondent's Exhibit No. 115.
" " " 116.
" " " 117.
" " " 118.
" " " 119.
" " " 120.
" " " 121.
" " " 122.
" " " 123.
" " " 124.
" " " 125.
" " " 126.
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" " " 130.
" " " 131.
" " " 132.
" " " 134.
" " " 138.
" " " 139.
" " " 143.
" " " 144.
" " " 145.
" " " 146.
" " " 147.
" " " 148.
" " " 151.
" " " 152.
" " " 153.
" " " 154.

[fols. 263 & 263½] It is further stipulated that the narrative statement of evidence filed herein, which includes a narrative statement of the oral testimony taken before the Secretary of Agriculture in said proceeding entitled "Docket No. 298, Secretary of Agriculture vs. St. Joseph Stock Yards Company", together with the original exhibits hereby stipulated to be transmitted to the Supreme Court of the United States, set forth in condensed form all oral testimony offered on the trial hereof and all testimony offered

in the form of exhibits, which is essential to the decision of the questions presented by the appeal.

Wendell Berge, Counsel for the United States of America and Secretary of Agriculture. R. E. Culver, Wm. N. Strack, R. D. Rynder, Counsel for Petitioner.

September 11, 1935.

[fols. 264-274] UNITED STATES OF AMERICA:

BEFORE THE SECRETARY OF AGRICULTURE, BUREAU OF ANIMAL INDUSTRY

Docket No. 298

In re SECRETARY OF AGRICULTURE

vs.

ST. JOSEPH STOCK YARDS COMPANY, Respondent

Abstract of Record

Hearing held at St. Joseph, Mo., December 2 to 17, 1929

[fol. 275] [Title omitted]

The following is a copy of the order of inquiry and notice of hearing, which instituted the above entitled proceeding.

(Caption omitted)

ORDER OF INQUIRY AND NOTICE OF HEARING

It appearing to the Secretary of Agriculture that the St. Joseph Stock Yards Company, South St. Joseph, Missouri, respondent, is engaged in the business of conducting or operating a stockyards at South St. Joseph, Missouri, which has been ascertained by the Secretary of Agriculture to be a "stockyard" within the definition thereof as used in Title III of the Packers and Stockyards Act, 1921, as amended, and which has been posted as such; that in accordance with the requirements of said Act, respondent [fol. 276] has heretofore filed and put into effect schedules of rates and charges for its services as a stockyard owner, and that on September 30, 1929, respondent made and published Tariff No. 5, which was filed with the Bureau of Animal Industry to become effective October 10, 1929; and

it further appearing that a proceeded*ing* under Title III of the Packers and Stockyards Act, 1921, as amended, should be had for the purpose of determining the reasonableness and lawfulness of said schedules of rates and charges as set out in Tariff No. 5-

It is therefore ordered that notice to the above-named respondent be, and hereby is, given that a hearing upon the reasonableness and lawfulness of the rates and charges as provided for by said Tariff No. 5 will be held before an Examiner designated by the Secretary of Agriculture, in the Federal Building, St. Joseph, Missouri, beginning on the second day of December, 1929, at the hour of ten o'clock a. m., or as soon thereafter as the parties may be heard, and continuing from time to time until said hearing is completed. At the above hearing the said respondent and all interested parties will have the right to appear and present such evidence with respect to the matters and things set forth as may be relevant.

In witness whereof, The Secretary of Agriculture has signed this order and caused the official seal of the Department of Agriculture to be affixed hereto in the City of Washington this 9th day of October, 1929.

R. W. Dunlap, Acting Secretary of Agriculture.

(Official Seal.)

[fols. 277-286] **Abstract of Evidence**

EVIDENCE OFFERED BY GOVERNMENT

Pursuant to the above order of inquiry the hearing therein specified began at the designated place in St. Joseph, Missouri, on December 2, 1929, before an Examiner of the Department of Agriculture. The Government and the respondent were present by counsel.

[fol. 287] Land Appraisal by Government

W. L. MACK, a witness called by the Government, after being duly sworn, testified in substance as follows:

Direct examination:

I reside in St. Joseph, Missouri, and engage in the real estate business at 224 Illinois Avenue in that part of St.

Joseph known as South St. Joseph. My office is two blocks from the stockyards. I have been in the real estate business since March 1, 1910, and at the present location 3 years. I moved there from 322 Illinois Avenue. Prior to March 1, 1910, I had no real estate experience. During all the time I have been in the business I have been located in South St. Joseph (T. 15). I do not specialize in any particular property or location but for ten years I specialized in sub-divisions. I handle property anywhere in the City of St. Joseph and farm lands in Buchanan County. The greater volume of my business is in South St. Joseph. I am a native of Kansas but have lived in St. Joseph 31 years. Before going into the real estate business I was in the barber business for eleven years.

[fols. 288 & 289] The first experience I had in valuing land of any importance was some three years ago when, with five other gentlemen, I attempted to re-value the City of St. Joseph for tax purposes (T. 16). We were engaged in that work about five months but were stopped by an injunction before we finished. My other experience in land valuation has been with reference to minor tracts. I never had as big a job as the valuation of the St. Joseph Stockyard Company's land. I am a member of the real estate board and we are called upon to appraise property very frequently. This year we appraised something like $200,000 of property for the school board. In 1921 I did some work for the Burlington Railroad. There were twenty-two pieces of property in Florence Addition just adjacent to the stockyards. It was not of the same general character as the stockyards property but was cheap resident property occupied by more humble homes and rather low, and my appraisal was the outgrowth of damage suits of individuals against the Burlington Railroad for flooding their property (T. 17).

I made for the United States Department of Agriculture an appraisal of the lands of the St. Joseph Stockyards Company. I finished it in August, 1927, and was engaged upon it some 60 or 75 days. I made a report of that appraisal of which Government Exhibit 4-D is an exact copy.

Government Exhibit 4-D

This exhibit will be found in the volumes of this abstract entitled "Exhibits."

The field work of that appraisal was completed about July 15, 1927, and it took me about two weeks to compile the report.

[fol. 290] Government Exhibit 4-L is a true copy of my report as of October, 1929, except my report showed 450.743 acres and Government Exhibit 4-L shows 449.874 acres. This variance is due to the correction in the acreage of tract No. 7. I did not make that correction on my report. The appraisal value of tract No. 7 has been corrected to conform to the correction in acreage.

GOVERNMENT EXHIBIT 4-L

Valuation of Real Estate
St. Joseph Stock Yards Company, St. Joseph, Missouri
Areas Corrected as Shown in Attached Correspondence
Values Taken from Revised Appraisal by Mr. W. L. Mack, Dated October 28, 1929

Tract Number	Area		Appraised Value		
	Acres	Sq. Ft.	Per Acre	Per Sq. Ft.	Total
A	46.500	2,025,540	$15,246.00	$.350	$708,939.00
B	1.170	50,965	15,246.00	.350	17,837.75
B-1	0.600	26,136	15,246.00	.350	9,147.60
C	60.900	2,652,804	15,246.00	.350	928,481.40
D	43.580	1,898,345	8,712.00	.200	379,669.00
E	11.600	505,296	10,890.00	.250	126,324.00
1	22.537	981,712	1,000.00	.023	22,579.38
2	10.880	473,933	750.00	.017	8,056.86
3	9.100	396,396	500.00	.0115	4,558.55
4	55.900	2,435,004	3,049.20	.070	170,450.28
5	10.000	435,600	10,890.00	.250	108,900.00
6	24.900	1,084,644	500.00	.0115	12,473.41
7	5.652	246,198	500.00	.0115	2,831.27
8	28.000	1,219,680	500.00	.0115	14,026.32
9	12.000	522,720	500.00	.0115	6,011.28
10	2.600	113,256	500.00	.0115	1,302.44
11	56.600	2,465,496	4,356.00	.100	246,549.60
12	28.400	1,237,104	6,534.00	.150	185,565.60
13	0.870	37,897	574.71	.013	492.66
14	18.085	787,783	4,332.70	.100	78,778.30
	449.874	19,596.509			3,032,974.70

[fol. 291] Government Exhibit 4-M is my opinion of the present day value of tract No. 14 and of tracts A, B, B-1 and C for any other purpose than that for which it is used at the present time.

GOVERNMENT EXHIBIT 4-M

Supplement to Appraisal of the lands of the St. Joseph Stock Yard Company at St. Joseph, Missouri

The values of 35 cents per square foot ascribed in my appraisal to the tracts designated therein as "A", "B", "B-1" and "C", are predicated upon the particular value of those tracts for stockyard purposes. Their values for the highest and best uses, other than stockyard purposes, of which they are susceptible are, in my opinion, 20 cents per square foot.

The value ascribed to the tract designated in my appraisal as No. 14 is as of the year 1927. Since that time values of similar and adjacent lands within the corporate limits of St. Joseph, Missouri, have, in my opinion, declined and are now 25 per cent lower. Therefore the present value of this tract No. 14 is 7½ cents per square foot.

These values, applied to the areas of the aforesaid tracts "A", "B", "B-1", "C" and "No. 14", are tabulated as follows:

Tract No.	Acres	Square Feet	Appraised Value Per Acre	Per Sq. Ft.	Total
A	46.500	2,025,540	$8,712.00	$.20	$450,108.00
B	1.170	50,965	8,712.00	.20	10,193.00
B-1	0.600	26,136	8,712.00	.20	5,227.20
C	60.900	2,652,804	8,712.00	.20	530,560.80
No. 14	18.085	787,783	3,267.00	.075	59,083.75

(S.) W. L. Mack, Land Appraiser.

The method I pursued and my procedure in arriving at the valuation of these lands of the stockyards company may be described as follows: Each tract has a separate idea as to value. My tracts A, B, B-1 and C are particularly located for the use to which they are put. No other tract in the entire acreage has the same value as these. This is due to the fact that sewerage, water, light, accessibility to transportation and things of that nature are possessed by tracts A, B, B-1 and C (T. 25). Railroad facilities also play an important part in the value of these tracts.

[fol. 292] I examined each separate tract. I also examined sales that had been made of adjacent and near-by lands and embodied an account of such sales in my report which is Government Exhibit 4-D. My valuation of these

various tracts of respondent's lands is based upon my general knowledge and experience in the real estate business in South St. Joseph and also from a comparison with actual sales of adjacent lands (T. 26). The difference in value of tract No. 14 between the 10¢ per square foot shown in my appraisal report of October 28, 1929, and the 7½¢ per square foot shown in the supplement to that appraisal (Government Exhibit 4-M) is due to the general shrinkage in real estate values of the entire territory of residential property adjacent to tract No. 14 as is shown by sales made this year (1929) in various property in that vicinity. It is for that reason that I draw the conclusion that there has been a shrinkage in value. No shrinkage in value has occurred since October 28, 1929 (the date of Government Exhibit 4-L). The same value per square foot, namely 10¢, is shown for tract No. 14 in the 1927 appraisal (Government Exhibit 4-D) as in the 1929 appraisal (Government Exhibit 4-L) (T. 27), but there is a variation of $2,000 in the total. This variation is due to a difference in the number of square feet shown for tract No. 14 in the two reports (T. 28).

Tract No. 14 as shown on Government Exhibit 4-O is divided into several different blocks. The present value of 7½¢ per square foot covers the entire tract. A three-story hotel known as the Transit House is located on a small square of land in the north end of tract No. 14 which square is marked No. 40 on Government Exhibit 4-O. I have estimated the value of the land in that square. This value is entirely for business purposes. A certain tract back of it was formerly occupied by the stockyards as a horse and mule market and is used today as a sheep [fol. 293] feeding barn. If the buildings on that part were destroyed the land would be good only for residential purposes (T. 29); that is, the land back of the Transit House. It would have no value as business property whatever but the Transit House site (block 40 in tract No. 14) is valuable as business property and is worth seven or eight times as much as the land in tract No. 14 which lies back of it. The Transit House site and the other portions of tract No. 14 which front on Illinois Avenue, exclusive of the buildings located on them, (T. 30) was worth in 1927 $200.00 a front foot (T. 32). That has been subject to a decrease of 25% due to prohibition, to the soft drink parlors, about six or seven buildings in that block, which have been locked up,

and no rental is being received from them. Therefore, it is my opinion that the value of that part of tract No. 14 which is occupied by the Transit House is now $150.00 per front foot and the corner lots on each side of the Transit House would be worth more. My opinion is based upon rental values and sales on the other side (T. 32). My recollection is that this north half of block No. 8 which is the part of tract No. 14 upon which the Transit House is located is 158 feet and a fraction deep (T. 34).

In appraising tract No. 14 I took into consideration the front footage of the Transit House and each block separately all the way through the tract, adding to it the vacated streets and squaring it into square feet. I took the total and prorated it over the entire tract as required by my contract, to arrive at the value per square foot. By contract I mean my contract with the Department of Agriculture. It has been a long time since I did that (T. 30) but my recollection is that I valued the block across Indiana Avenue at $20.00 a front foot and the block on Massachusetts Avenue at the same value. That is, I placed a value of $30.00 a front foot on the south half of block No. 8 and [fol. 294] the north half of block No. 9; $25.00 on the south half of block No. 9 and the north half of black No. 18; $20.00 on the south half of block No. 18 which is in the South St. Joseph Town Company's Second Addition and on the north half of block No. 1; $17.50 on the south half of block No. 1 and the north half of block No. 12; $15.00 on the south half of block No. 12 and the north half of block No. 13; $12.50 on the south half of block No. 13 and the north half of block No. 20; $10.00 on the south half of block No. 20. Certain of the streets formerly running through tract No. 14 have been vacated. I added the area of those vacated streets and prorated it at the same ratio per square foot. That is how I arrived at my valuation of that tract of land based entirely upon the market value of the land which is across the street in the same addition.

The above-mentioned blocks 1, 12, 13 and 20 are in the South St. Joseph Town Company's Third Addition (T. 31). In that way I arrived at my valuation of 10c per square foot when I was compiling my report during the month of July, 1927, and I arrive at my present value of 7½c per foot on the basis that vacant property in that locality has shrunk 25% in value (T. 32). In making my 1929 revision (Government Exhibit 4-L) of my appraisal

and report which was made in 1927 (Government Exhibit 4-D) I didn't change any prices but only revised the areas. I did not change the prices because I was not requested to do so. I did not understand that I was to bring the prices up to date (T. 34). The revision of the value of tract No. 14 from 10c per square foot to the 7½c per square foot shown in Government Exhibit 4-M was made to take care of the 25% decrease of which I have spoken. That is the present day value and applies only to that part of tract No. 14 which is inside of the City. It doesn't apply to any tract except No. 14. The reason for not applying it to [fol. 295] respondent's other lands is that I know of no sales which would justify the shrinkage while I do know of numerous sales of property adjacent to this tract No. 14 that would justify that shrinkage in price. Respondent's other property is not within the corporate limits of St. Joseph, but tract No. 14 is. In that particular territory, the 25% shrinkage in value applies to land within the corporate limits (T. 35); that is, to plotted lands rather than industrial lands. Take for instance the St. George Addition which lies immediately north of that and joins tract No. 14 on the north of Cherokee Street, I think from there to Missouri Avenue. There is a great deal of vacant land in there. The same shrinkage in price would apply there from Missouri Avenue to Alabama Street.

I have not revised the prices of any of respondent's land that lies outside of the corporate limits of St. Joseph. There have only been two recent sales of any part of that property and one of those is the sale to the Insoboard Company of land within tract No. 1. I understand that the price it sold for was identically the price at which I appraised it.

There is a difference in the total land areas used in my report and that shown in the report of Mr. Spratt. This variation occurs in several of the tracts and is due to the land under lease to the Belt Railroad (T. 36). Mr. Spratt's appraisal shows 77.46 acres less than mine. 43.58 acres of that difference is included in my tract D which is the Belt Railroad lease and the remaining difference is covered in my tracts A, B, B-1 and C by the Belt Railroad lease. When I made my tabulations I did not know that the Belt Railroad lease was included in those tracts (T. 37). The land leased to the railroad in tracts A, B, B-1 and C is the

same kind as that used for the stockyards and knowing its location I would appraise it at the same value.

[fol. 296] Referring to Government Exhibit 4-M, the supplement to my appraisal, the valuation of 20c per square foot there placed upon tracts A, B, B-1 and C is explained as follows: I think the present use to which that land is being put is its best use. I didn't think that any other industry could use that land as advantageously as the stockyards company could. I know of no industry that we have or would be likely to come to St. Joseph that would use that large area of land. Consequently, it would be necessary to sub-divide it which would be a very expensive proposition and the cost of sub-division would reduce the value very materially. 35c was the value I placed upon the land when used for stockyards purposes. I had no idea of appraising it for any other purpose than that. 20c per square foot is the value when used for any purpose other than stockyards (T. 38).

The relationship between tracts A, B and C and the land leased to the Belt Railroad which adjoins those tracts would make those lands of the same value.

Thereupon the Government offered in evidence the documents and papers heretofore identified and testified to as Government Exhibits Nos. 4-D, 4-L, 4-M and 4-O, to which respondent objected on the ground that they evidently are to be used for the purpose of enabling the Secretary of Agriculture to determine the value of the property of the St. Joseph Stockyards Company and, under the statute, the Secretary has no authority to value that property. Respondent also objected to all the testimony of the witness Mack which had been given for the purpose of determining value and moved to strike the answers of said witness. The objection was overruled by the Examiner and the exhibits received in evidence and the motion to strike the testimony of the witness Mack in regard to value was denied, to which ruling of the Examiner respondent then and there [fol. 297] excepted. Thereupon it was agreed between counsel for the Government and counsel for the respondent and the Examiner that throughout the proceeding it should be understood that this objection, ruling and exception, applies to any and all evidence with reference to the values of respondent's property without the necessity of repetition of the objection, ruling or exception (T. 40).

The Government offered in evidence as Government Exhibit No. 5 copy of a map which this witness testified had been furnished him by respondent and which he had forwarded to Government's engineer, Hermann C. Henrici. The purpose of this offer was to show that the map which formed the basis of Government Exhibit 4-O had been received from the respondent but, upon counsel for the respondent stating that there was no objection to Government Exhibit 4-O on that ground, the offer in evidence of Government Exhibit No. 5 was withdrawn (T. 42).

At this point the witness identified Government Exhibit 4-R as a map of the City of St. Joseph and stated that he was familiar with the map (T. 44). He marked thereon the red figures 1 to 9, inclusive. This identified the tracts listed and described on that page of Government Exhibit 4-D which is entitled "Transfers of Vacant Land adjacent to the St. Joseph Stockyards Company". He stated that the numbers 3 and 4 apply to the same tract for the reason that No. 3 represents a conveyance to an individual and No. 4 a conveyance of the same land by that individual to a company which he had formed.

Then the witness indicated on the map by the numbers 10 to 25 the tracts of land listed on that page of Government Exhibit 4-D which is entitled "Transfers of Improved Land adjacent to the St. Joseph Stockyards Company." He explained that tract marked 10 is the same land as that [fol. 298] previously marked 5, the reason being that when he purchased that land for the Kelsey Nurseries from the St. Joseph Street Railway, Light and Power Company on October 28, 1913, it was vacant land but when the Kelsey Nurseries transferred it to Edward Welch on May 21, 1917, there had been erected upon it a frostproof warehouse and office that greatly improved it. He also stated that the Kelsey Nurseries is a corporation of which Edward Welch is a majority stockholder (T. 46).

Then the witness indicated on the map by the numbers 32 to 35, both inclusive, the tracts listed on Government exhibit 4-D as transfers of improved land in the vicinity of but not adjacent to respondent's land.

Thereupon the Government offered in evidence as Government Exhibit 4-R, a map of the City of St. Joseph identified and testified to by the witness. There was no objection to the introduction of the map except in so far as it

showed certain transfers of property which respondent deemed irrelevant to issues in this proceeding (T. 17).

[fol. 299] Cross-examination for purpose of respondent's objection:

The only part of respondent's land to which I applied these transfers No. 1 to 9 from a mathematical standpoint was that portion of tract No. 14 on which the Transit House is located. This is because these transfers are in the vicinity of the Transit House. As to the other transfers I put them in my report because the Government required me to furnish a certain amount of transfers of land adjacent to but not immediate to respondent's land, and I did that. I do not think the other transfers shown on Government Exhibit 4-R have any bearing whatsoever on the value of respondent's lands (T. 48).

Thereupon respondent completed its objection to Government Exhibit 4-R by stating that it objected to the transfers thereon shown as Nos. 26 to 35, inclusive, but not to transfers Nos. 1 to 25, in so far as they may show the value of tract No. 14 of respondent's land.

Continuing his testimony, the witness explained his previous statement that he regarded certain transfers as having no bearing on the value of respondent's land, by saying: The reason for that is that there has been prevalent in St. Joseph ever since I have been in the real estate business a practice of not showing actual considerations in deeds and it would be very difficult, where the consideration is shown as $1.00, for me to determine what the real sale price was. For that reason, not being personally acquainted with those individual tracts of land, not having sold them, I disregarded them.

Thereupon respondent renewed its objection (T. 49) and the witness continued under examination by counsel for the Government to testify as follows: Then with respect to tract No. 28; for instance where the consideration is [fol. 300] stated as having been $5,250 I do not know what the true consideration may have been (T. 50).

Thereupon the Examiner overruled respondent's objection and respondent moved to strike that part of Government Exhibit 4-D which is designated Exhibit 5 and is the

page which refers to the aforesaid transfers Nos. 26 to 35, inclusive (T. 52) and the motion was denied by the Examiner. To the ruling of the Examiner in both respects respondent excepted.

Direct examination continued:

I based my appraisal of respondent's lands outside of the corporate limits of St. Joseph upon the intimate knowledge of the cost of producing it, the valuation of it as a stockyards brought about by a city of the character and size of St. Joseph and upon the accommodation of the agricultural country furnishing adequate market for its products such as corn and livestock of various kinds. In making my appraisal I used my general knowledge gained in my experience as a real estate man (T. 53).

Cross-examination:

I have been and still am a member of the appraisal committee of the St. Joseph Real Estate Board. The committee consists of 9 members, 3 of whom are designated by the President of the Board for each appraisal. Mr. Wm. E. Spratt is Chairman of that committee. The appraisal we made for the School Board purposes covered something like 50 or 60 parcels of property. I assisted in the appraisal of 2 parcels (T. 54). There were a number of different sites for schools, some 5 or 6 of which have been appraised and others are to be appraised by members of the committee of 9.

I do not have here a copy of my contract with the De- [fol. 301] partment of Agriculture. At this point counsel for the respondent requested a copy of the contract between the Department of Agriculture and the witness covering the appraisal of respondent's property. Counsel for the Government agreed to furnish such copy (T. 56).

My first appraisal of respondent's property is shown in Government Exhibit No. 4-D. That appraisal was made as of August 1, 1927. I spent about 60 days of work on it prior to that date. Page 2 of Exhibit No. 4-D shows the unit price. The statement, "The values established are fair market values as of the present date, careful consideration having been given all known factors having any bear-

ing thereon", appears in my appraisal (Government Exhibit No. 4-D) (T. 56). That was my opinion at that time and is still my opinion as to all respondents property lying outside the City of St. Joseph. That is, used in the stockyards but not with respect to trac*k* 14, which is inside the city. I say that is my opinion when it is used for stockyards purposes. In other words, the supplement (Government Exhibit No. 4-M) changes its valuation when it is used for something else. Referring to the above quoted statement from my appraisal (Govt. Exhibit No. 4-D) I had considered everything I knew of at that time (T. 57). It is still my opinion, except as to tract 14. With the exception of that tract, the unit prices referred to on page 2 of Government Exhibit 4-D, represent my opinion of the present value of the property of the St. Joseph Stockyards Company after carefully considering all known factors having a bearing upon the valuation of that land (T. 58).

I have before me Government Exhibit No. 4-M which I prepared last week. The preparation of it arose from a discussion with attorneys as to the use of respondent's property for any purposes other than stockyards. That applies to the part of the property now occupied by the [fol. 302] pens. I cannot say that it had ever occurred to me to value this land for any purposes other than the purposes for which it is being used, but it occurred to me that it might be used for something else. It was last week that I first conceived the idea that respondent's land should be valued for use other than stockyard purposes (T. 59). I have not had the pleasure of making an appraisal of anything like the stockyards before. When I have appraised other lands such as the School Board lands, I have not excluded certain purposes for which the land might be used, and have considered such lands as it existed at the time. I have not tried to imagine that it was used for some purpose different from that to which it was devoted at the time of the appraisal. When the question as to the value of the respondent's land for purposes other than a stockyard was asked and discussed, I immediately began to think of what would happen should the stockyards be moved off there tomorrow and that particular piece of ground be converted into some other use. It is bounded on the east by railroads with no ingress or egress except at Missouri and Illinois Avenues until you go west to

Packers Avenue (T. 60). I could conceive of no factory coming into St. Joseph that would utilize that piece of ground to its entirety as the stockyards uses it. Consequently, it would be necessary to use it for subdivisions into smaller tracts of land, which would take a tremendous amount of expense, being in fact practically prohibitive, except that an engineer could run a street through some convenient place west of the tracts and cross on Arizona, Wyoming and Dakota; Texas or Colorado streets on the east side of the tracts. In my opinion, such a street would be about 4 feet lower than the grade of the level of the stockyards' land. The same condition exists south of Illinois Avenue, where the streets have been vacated until you [fol. 303] get clear down to Michigan Street. I hope the stockyards will never move away from South St. Joseph, Mo. and I have no idea that they will, except that there are continuous rumors that they are going to, but I do not credit the rumors. I hope and believe that the stockyards will be one of the industries of the community for years to come and I hope they will grow. In preparing Government Exhibit No. 4-M, I did not consider whether the stockyards would or would not be moved away, but only if they were so moved, it would be necessary to establish other industries (T. 61).

In setting up on Government Exhibit No. 4-M, values of 20c per sq. ft., I have just presumed that the stockyards are not there and that the packing plants would be gone also. I have not presumed that the St. Joseph Belt Railroad would be gone. It may be that the Belt Railroad would disappear with the stockyards and packing plants but the Terminal Railroad would serve the same purpose for other industries. I did not pick out any particular industry for this land which would give it a value of 20c per sq. ft. It naturally would be something entirely divorced from the stockyard and packing house industries. It might be grain elevators, grain mills or small factories (T. 62).

I cannot conceive of St. Joseph being fortunate enough to get another industry of the size of the combined stockyards and packing house industry, now at St. Joseph. Even if I assumed that it could, I do not think that respondent's land would have for such an industry the value it has for stockyard uses. I would have to analyze pretty much in detail the character of this proposed industry to

determine what would be the value of the land to it. Until I know its character, it would be more or less a matter of conjecture as to what the land would be worth to it.

In valuing respondent's land as shown in Government [fol. 304] Exhibit 4-D, I did not arrive at the value of the land used by the packing plants. I am familiar with the location of Swift & Co. and Armour & Co. plants (T. 63). I would not at the present time place upon the land used by them the same value as respondent's land. The relationship between the stockyard company and the packers is partly responsible for my ideas of the valuation of the land used by the stockyard company—that is, the relationship of one to the other and also to that part of the belt railroad that lies in front of the stockyard company's loading and unloading docks. If one analyzes the various tracts of land lying further back, I think one would realize that I did not consider that as of as great value as the highly developed land lying along the railroad tracks.

As a general proposition I would consider that land which is being actively used is of more value than vacant land adjoining it. However, in my report I made certain allowances for the particular tract of land lying south of the hog yards that is used by the serum company, because that land is available for immediate development in expanding the stockyard. Also, the tract of land lying south of Armour Packing Co. is highly developed. I recall the tract south of Armour Packing plant as well as another tract of 11.6 acres, which lies north of Swift & Co. plant (T. 64). I value those lands at 25c per square foot. I consider them as expansion land for the packing plant. It follows, therefore, that the land occupied by the packing plants of Swift & Co. and Armour & Co. would have a value equivalent to 25c a square foot. That is occupied land, but I did not take into consideration the land that is occupied by the packers. I did consider the possibilities of additional packing houses and cold storage warehouses, or something of that nature, with vacant lands on both [fol. 305] sides of them. I didn't give any consideration to the value of the land used by the present packing houses. However, I will say now that I think it would be practically the same value (T. 65).

In comparing the values of the packing house sites and of the vacant land adjacent on the north and south of them,

I have not considered whether there would be a difference in value, because the former are being used and the latter is not. Normally that is a factor which is considered. I know that the two tracts shown in my appraisal as E and 5 are awaiting expansion of packing plants, warehouses, or something of that kind. The land that is being used by Swift & Co. and Armour & Co. is being intensively used for packing house purposes. If I were appraising a piece of property in the retail section of St. Joseph and I was working for you and you asked me to assume for such an appraisal that the retail section was wiped out, I probably would consider it (T. 66). I am just answering you frankly as I did in this case down there when the question was propounded to me, "what would that land be worth if it were used for something else." I say in my report its best use is for packing house purposes. If I were working for you and you asked me to consider certain factors, I would certainly do it. In making an appraisal I would consider, as everyone should, the interest of my client but would not be governed by it. When my appraisal of respondent's property, as stated in Government Exhibit 4-D, was made I appraised it as I thought it should be and I still think so. I would say that real estate men generally appraise property for its highest and best use. (T. 67).

Let me say something to you here. You seem to be trying to impress on me about this appraisal of property. Now there is no other case of appraisal of property that I [fol. 306] have ever done, and none that I know of, where one man has gone out and appraised it by himself. Now you are represented here by Mr. Spratt and Mr. Atkinson, who, with their intimate knowledge of 40 years of real estate business, have discussed various factors. I was doing this by myself with nobody to discuss it with and never did discuss it with anybody. I had to go out and take the individual tracts and set down and fix them out as best I could by myself without any intimate knowledge of whether I was right or wrong.

I notice that my appraisal of that tract 5 is now twice as much as Mr. Spratt's. Those are honest opinions, Mr. Spratt's and mine. Possibly his opinion was arrived at in talking with Mr. Atkinson. My knowledge came from being down there and watching the development from the frog pond up to the present time, and I considered it more val-

uable than they individually have considered it; that is because of my intimate knowledge of that particular tract and also the other tract there adjacent to Swift & Company. When I prepared my Exhibit No. 4-D, I put in it my own individual knowledge. I did not discuss that with anybody. It is still my opinion.

I would be very sorry to have the packers leave So. St. Joseph if I had to continue in the real estate business there. In that event I would have to look out for a new industry, but I would probably leave with them, if I knew that they were going (T. 68).

The land fronting on Illinois Ave. and occupied by the Transit House is worth at the present time about $150 a front foot. I don't think it would be worth anything like that amount if the packing houses and stockyards were moved away. The effect upon the city of St. Joseph as a whole of moving those industries would be very demoralizing, but Mr. Spratt and Mr. Atkinson should give you a [fols. 307-310] better idea of that than I, because they were there before I came. The packing houses and stockyards constitute the largest industry in the community, and wiping it out would be very demoralizing to the city and the entire country. I think it would cause land values all over the city to decrease.

[fol. 311] Redirect examination:

After Mr. Henrici, the Government's engineer, Mr. Bohannan, counsel for the Government, and I had discussed the matter of the supplement to my report which is now Government Exhibit 4-M, I gave very careful consideration and study to what would be the next best purpose for which respondent's land could be used. After considering it from every angle, of which I could think (T. 73) and taking into consideration other tracts of land in South St. [fol. 312] Joseph not owned by respondent, as comparative locations for similar industries, I formed my conclusion that 20¢ per square foot would be a fair valuation. The conference to which I have referred took place in the stockyards supervisor's office. No suggestion that my appraisal was too high was made to me and there was no criticism of it whatever. No one suggested to me any price that I should find. I do not recall that I was requested to do anything in particular. I do not remember whether it was Mr.

Bohannan or Mr. Henrici who asked me the question but immediately I began to think along the line as to what the land could be used for and thought out my own ideas without any reference or any suggestion from anyone. The fact of the matter is I have never had a suggestion from a single person in arriving at my valuation of this land. It was my own personal opinion without any suggestion from the Department of Agriculture or anyone connected with it (T. 74).

The fact that I have arrived at a value of 20¢ per square foot for this land for purposes other than stockyards does not change my opinion in the least that for stockyards purposes the land is worth 35¢ a foot. If I assume that the stockyards were moved to the west side of the packing plants and operating there and the packing plants running and the railroads just as they are and South St. Joseph unchanged, but the tracts A, B, B-1 and C now occupied by the stockyards would be left vacant with no sewers, water mains or anything on them, just bare land, I would say that the value of that land would be 20¢ a square foot. This is for the reason that it would still have the advantage of being outside the corporate limits and would not be subject to the rules and regulations of the City as compared with other lands adjacent to it.

[fol. 313] I recall the conference in my office last Saturday at which Mr. Bohannan, attorney for the Government, was present (T. 75). The particular matter discussed was the checking up of the variations between Mr. Spratt's division of the tract of land on which the Transit House stands with my manner of appraising it. I was asked to consider the value of the Transit House lot separate from the remainder of tract No. 14. I have considered that aspect of it at all times and the only reason for not listing it separately was the fact that my contract provided that I was to list the tract in square feet instead of separating it. I used the manner which I described yesterday, compiling it into square feet and not considering front foot prices in the final conclusions. We discussed the valuation of the Transit House site and I arrived at the conclusion to which I have testified that it was worth $150.00 a front foot. I also found it to be 158 and a small fraction feet deep and on that basis my valuation of it is approximately 95¢ a square foot. That valuation was arrived at in my office last

Saturday (T. 76). At that time I had received a copy of Mr. Spratt's appraisal in which the Transit House site was valued at 40¢ per square foot.

Recross-examination:

In what I have said on re-direct examination I did not intend to contradict anything I said on cross-examination and I would give the same answers today I did then. The suggestion as to a use for respondent's land other than for stockyards came from someone representing the United States Government (T. 77). I am assuming that if the stockyards were moved to the west side of the packing plant there would be plenty of land to accommodate it. I think in fact there is enough. Of course you might draw [fol. 314] a line so that there would not be sufficient and you might draw another line leaving a plenty. It is true that I stated in Government Exhibit 4-D that I could not comply with the requirement to ascertain the sale prices of tracts of land similar to respondent's properties because no such tract exists. If the stockyards were moved to the west side of the packing plants it would involve much more than merely moving the pens (T. 78). Not only the St. Joseph Belt Railroad but all the line haul carriers are built around the location of the stockyards. If the stockyards were moved to the west of the packing plants someone would have to revamp the entire rail situation. At the present time there is not sufficient railroad facilities on the west side and no sewerage there at all for pen use. I am not so sure about water, but I think there are some mains over there but they would have to be revamped to suit a new situation (T. 79). At the present time the packing plants receive livestock on the east side of the plants. If the stockyards were moved to the west side of the packing plants the livestock would have to be driven around to the east side of these plants and then processed back through the plant. I do not conceive that the present stockyards will ever be moved to the west side of the packing plants but if that were done I cannot conceive of it causing any great change in Illinois Avenue for I would see no reason for such change (T. 80). I don't think merchants would locate along that part of Illinois Avenue which now runs through the stockyards, eating houses might and also saloons, if we had them, and things of that nature, but I do not think the

merchants would move as that would necessitate changing the transportation lines and things of that kind. Illinois Avenue is a focal point for all employees of the packing houses, that is Illinois Avenue and Cherokee Street. They [fol. 315] get off the trolley cars there and walk over to the stockyards and packing plants. If the location of the two were changed it would require them to walk a little further. The only thing which would affect the retail trade on Illinois Avenue would be a change of transportation lines because otherwise the employees, above referred to, would pass the same points they now do. If the stockyards were moved to the west side of the packing plants some of the employees above mentioned would approach it by automobile over thoroughfares other than Illinois Avenue as some of them do now, but I am speaking of those who travel by street car lines (T. 81). If the stockyards were moved to the west side of the packing plants the people who ride the street cars now would continue to do so, and the only difference would be an increase in the difference they would have to walk.

I remember when the Exchange Building was at Missouri Avenue. It burned the year before I became a resident of South St. Joseph. I attended the dedication of the present Exchange Building. I am also familiar with the change in conditions that was brought about by changing the location of the Exchange Building. Before the Exchange Building was erected on Illinois Avenue (T. 82) that street had no business at all. It was a mudhole and swamp. The business that centered around the stockyards was at Missouri Avenue, right near the old Exchange Building, and when that building burned the business in that neighborhood moved to Illinois Avenue and that was partially due to respondent cutting off the west end of Missouri Avenue for egress and ingress from west Missouri Avenue to the territory back of the railroad tracks.

I think the value of 95¢ per square foot at which I have appraised the Transit House site is the value of land on that part of Illinois Avenue. If the stockyards were moved [fol. 316] to the west side of the packing plants many elements would enter into the question whether land along that portion of Illinois Avenue which lies between the packing plants and the Belt Railroad would be worth 95¢ per square foot. If respondent treated Illinois Avenue as it

did Missouri Avenue the value of that land would be about the same as land along Missouri Avenue, but if they left it open as the main entrance like it is today, then the change would not affect the value (T. 84).

Redirect examination:

I said in Government Exhibit 4-D that I was unable to find tracts of land containing approximately 500 acres within the city limits of St. Joseph and similar to the stockyards property. Respondent uses only about 90 acres of its land for pens, alleys, streets, Exchange Building, etc., and there is nothing in my report (Government Exhibit 4-D) which shows that I could not find 90 acres of land similar to the stockyards.

The businesses I spoke of on Missouri Avenue were mostly eating houses and saloons (T. 85). That was about the years 1898 and 1899. Since 1899 there have been changes in South St. Joseph other than the erection of the new Exchange Building. All of the development that is there now has been made since that time. There wasn't a paved street or a sewer, there was only a make-shift street car line which ran from 6th Avenue at Atchison down over the Rock Island tracks. This was a stub line for the stockyards. Later in about 1900 or 1901 they extended the car line past the stockyards to the lake. For a number of years that was a one-car affair running every half hour. King Hill Avenue was paved in 1901, I think. That furnished the first decent roadway to the stockyards. At that time [fol. 317] the stockyards district in South St. Joseph was not a part of the City of St. Joseph but was called St. George. Missouri Avenue had only one or two dry-goods and clothing stores, about three drug stores, one school and one church. There was a population of less than 2500 people. There were no city conveniences of any kind until about 1900. In 1899 there were no automobiles in St. Joseph that I know of (T. 86). Now trolley cars run from South St. Joseph to the downtown section of St. Joseph about every seven minutes, I believe. That schedule is maintained from five o'clock in the morning until after midnight. After midnight there is a half-hour service which continues until five o'clock the next morning. The trolley cars turn on Illinois Avenue at the junction about half a block east of the Transit House. The point at which pas-

sengers destined to the stockyards and packing plants will leave the trolley cars depends upon what part of the stockyards they wish to visit. If it be the sheep yards they leave at Lake and Missouri Avenue, but if they are going to the packing houses or the Exchange Building they would leave the cars at Cherokee Street and Illinois Avenue (T. 87). Many people leave the cars at the latter point. The car stop is about 200 feet from the Transit House.

Witness was asked the following question by counsel for the Government: "Well, I will ask you now, Mr. Mack, if in fact, your estimate of 20¢ a square foot contemplates the packing plants and railroads down at South St. Joseph all wiped out?" to which question counsel for respondent objected on the ground that it was improper redirect examination. The objection being overruled by the Examiner, the witness replied as follows: "I considered that the packing houses and the Exchange Building and the pens and the sewers and everything was wiped out, that the Belt Rail- [fol. 318] road was gone, but the Terminal and the Burlington was still there (T. 90)." "Q. Now, if you consider the packing plants, the Belt Railroad there, if just the stockyard pens and the Exchange Building were wiped out, what is your idea of the value?" A. "It would be 20¢ a foot, because the relationship between the stockyards and the packing houses, one to the other, would make it the same, if one is gone or both gone."

Recross-examination:

Whether the destruction by fire of the stockyard structures would effect the value of the land upon which they are located would depend entirely on the action taken by respondent with respect to rebuilding on that site (T. 91). My valuation of 20¢ a square foot is not necessarily based upon the thought that if the stockyards were abandoned the packing houses would have to be also. If the stockyards were suddenly destroyed but the packing plants left ready to operate and the St. Joseph Belt Railroad remained as at present connected up with the other railroads and livestock was coming rolling in there would be some confusion, but I do not know what would happen. There was a public livestock market at St. Joseph before the packers came but I would not compare it with the present market, nor would I compare it with a market that some individual might build;

that is, not for a good many years. If we were to lose that stockyards today the wolves of Omaha and Kansas City would be grabbing our business here before we could build a stockyards and there would be nothing left except the immediate territory here that could be accommodated with a much smaller yard. In such event Kansas City and Omaha would not take all the business but they would take a large percentage of it (T. 92). I do not know what effect [fol. 319] that would have on the packing plants and the St. Joseph Belt Railroad. There is a great deal of livestock that comes to this market that the packing houses do not use. It is shipped away from here now. If the packing plants don't increase their present capacity there might be enough livestock left to supply them, but the market would not be anything like it is today. Neither would the City of St. Joseph. If the stockyards were wiped out and the packing plants still operating they would have to use some of the land to build holding pens for the livestock which they continued to handle (T. 93). I suppose the packing plants now have their own pens to handle the livestock they buy. If there were no stockyards and the packing plants were able to use all the livestock which is now coming to respondent's stockyards, they probably would have to enlarge their present pens, they would not occupy the same territory which respondent now occupies with its stockyards. That is a matter of conjecture. There is plenty of territory to use. I do not know whether Armour would use the present pens or not. There are ten acres of land lying south of Armour's plant and there is a piece west of Packers Avenue that Swift & Company may use. The whole thing is a matter of conjecture. Whether the building of such pens by Swift & Company and Armour & Company would have any effect on the land value of 20¢ per square foot would depend entirely upon Mr. Swift and Mr. Armour (T. 94).

The present site of the stockyards is an ideal location for that purpose. If the structures now on it were destroyed the question as to whether it would have the value found in Government Exhibit 4-D would depend entirely on the individuals. It is my experience in real estate business that values are fixed largely by the customer who wants to purchase attractive land. In other words, attractive land may be worth 35¢ a foot to me and it might not

be worth over 15¢ to you, or vice versa. I have no opinion [fol. 320] as to the value in that event as I do not know who the buyer would be. I said that if the present stockyards were wiped out but the packing plants and the Belt Railroad remained I believe the land now occupied by the stockyards would be an excellent site for a new one. I said that in connection with Swift & Company controlling the stockyards. If some other independent packer came in he might have an entirely different idea of the value. I am forming my opinion of 35¢ per square foot as it is now owned, but if it were wiped out and Mr. Armour or Mr. Dold or some other man would come in here it would be worth whatever he thought it was worth and not what I thought it was worth (T. 95). Under these circumstances I do not know what it would be worth because if a calamity of that kind would happen it would depend entirely on how long it would be before the stockyards could be rebuilt after the land had been repurchased. It has taken 30 years to develop this market under favorable conditions without any such calamity. If a calamity of that kind would happen we do not know what it would be worth. My value of 20¢ is not based on any calamity. I am not assuming a calamity at all, I am assuming that there never was a stockyards there, in which event the land would be worth 20¢ a square foot with the present conditions as existing on the east side of the railroad tracks (T. 96). There is a property adjacent to the north side of the present stockyards. That property never had a stockyard on it but is nearly as well situated as the land occupied by the stockyards. Divided into small tracts it could be used for small industries. I don't believe that I considered whether or not there had been a stockyards at South St. Joseph. The question asked me was what would the land be worth for any purpose other than a stockyards. As I explained on direct testimony I [fol. 321] took into consideration that I could not conceive of any industry that would come to St. Joseph that would be large enough to use the tract in its entirety. Consequently, it would have to be cut into smaller tracts and to cut it into such tracts would be very expensive on account of the accessibility being at Illinois and Missouri Avenues. The tremendous expense of making these changes caused me to arrive at a fair value of 20¢ a square foot for any other purposes than stockyards (T. 97-98). As to tracts

A, B, B-1 and C of respondent's land which is occupied by pens its present use is absolutely the highest and best use to which it could be put. These tracts include part of the Belt Railroad and contain 109.17 acres. All of that land is not actually occupied by pens. It includes the tracts leased by the Serum Company and also the Davis & O'Connell feed lots. If the stockyards were moved to a new location there would be required an area greater than that merely occupied by pens (T. 99). Naturally the related industry would move with the stockyards.

Whereupon the witness was excused (T. 100).

Respondent's Facilities and Services

JAMES CHRISTENSEN, a witness called by the Government, being first duly sworn, testified in substance as follows:

Direct examination:

My name is James Christensen; residence, Denver, Colorado. I am employed as Field Assistant to the Chief, Packers and Stockyards Division, United States Bureau of Animal Industry. I have been in the Government employ in similar positions since the fall of 1918. My duties are the doing of general outside field work for the division. At the present time I am specializing on the investigation and [fol. 322] description of stockyards facilities and services and the lands and properties owned by stockyard companies who are under the jurisdiction of the Packers and Stockyards Act.

Prior to entering the Government service in 1918 I was employed in railroad service in various official capacities as specialist in the handling of livestock. I was so employed by two southwestern trunk line railroad systems for approximately 25 years. During the last six years of that period I was supervisor of a freight handling bureau, the function of which was to improve methods of handling livestock and freight and of the operation of stockyards (T. 101). I was railroad freight claim agent for a great many years having personal responsibility for all payments of losses, damages and overcharges concerning freight rates on livestock. In fact I was responsible for all traffic claims and for the final result in the event that I failed to

make a settlement with the claimant. In these capacities I was first employed at St. Joseph, Missouri, for the Burlington Line in the freight department for about two years. Subsequent to that I was employed by the M. K. & T. Railroad in various capacities. First as a stenographer while I was young, and following that as private secretary, freight rate clerk, special claim adjuster and finally freight claim agent for that railroad and other railroads. During the last six years of my railroad experience I was with the Texas & Pacific Railroad at Dallas, Texas. In the investigation of freight claims for delay or improper handling of livestock in transit naturally the services of the terminal facilities were involved and in cases where the claim was caused by physical injury to the animals we had to investigate for the purpose of determining whether the service prior and subsequent to rail transportation was partly or [fol. 323] entirely responsible for the injury. Also, in case of claim for excess shrinkage (T. 102) or decline in marketing conditions owing to delay I naturally was obliged to analyze stockyard services, market conditions and methods of handling and marketing livestock at the public stockyards. I have been reasonably familiar with the principal stockyards in this country for 30 or 35 years. I have been familiar with the details of respondent's stockyards for about two years. I started my survey here in the summer of 1927. Prior to that time I was generally familiar with respondent's stockyards but not from personal observation, though I had visited this yard occasionally 15 or 16 years ago (T. 103). My special investigation was conducted at respondent's stockyards for the purpose of describing for rate making purposes lands and properties used and the services furnished by respondent.

I came into the Government service under the old Bureau of Markets, now the Bureau of Agricultural Economics as a specialist in marketing livestock and meats. That was in 1918. I did not assume the duties of that position (T. 104) because about that time the war-time stockyards supervision was inaugurated and I was appointed livestock market supervisor in the same bureau. I became supervisor at a group of markets in the northwest, including Portland, Seattle and Spokane. That was a war-time activity and when it was abolished I went back to the Bureau of Markets (T. 104-a) and was assigned to a national survey of the retail meat business. I continued in that activity

until I became a member of the Packers and Stockyards Division.

I began my investigation of respondent's stockyards in the month of August, 1927. I came to St. Joseph at that time and remained on the stockyards a little over a month. The aggregate time I have spent on the stockyards in mak- [fols. 324-331] ing this investigation is about two months. I observed personally the facilities I have described. I made a very personal observation of the facilities and the land and the methods of handling livestock. I was conducted over the yards the first time by Mr. Black, superintendent of the yards, and subsequently I was with various employees or other people whose business is on the stockyards. The sources other than personal observation from which I obtained the information (T. 105) were explanations made to me by stockyard employees and officials, market agencies, dealers, livestock market supervisors and various other accredited persons who are familiar with stockyard operations at the St. Joseph market. Most of the information I have used in compiling operating tables was furnished me through the auditors of the Packers and Stockyards Division. I would tell them what information I wanted and they would compile it from the stockyards records. The first auditor in charge of this part of the work was Mr. Westinghouse. Subsequently it has been Mr. Bufkin. There were other auditors engaged upon the work, one of whom was Mr. Muse. All of the auditors were working under the chief accountant of the Packers and Stockyards Division. In determining the measurements and areas I obtained a map when I first came to the stockyards. I do not recall who furnished it, possibly Mr. Henrici (T. 106).

[fol. 332] Transit House

Referring particularly to the item on page 94 of Government Exhibit 5-C, designated "Hotel Transit House," the only other stockyards at which hotels are owned and operated by the stockyard company, as I now recall, are at Chicago and St. Louis. I have not been to the Pittsburgh Stockyards (T. 125).

[fols. 333–340] Counsel for the Government stated that he was informed that the stockyards at Pittsburgh and at Lancaster, Pa., maintain hotels (T. 125-126). Thereupon the witness continued:

There is no hotel at the Sioux City, Omaha, Kansas City, or Denver stockyards. I would estimate that the stockyard at Sioux City is practically the same, or possibly a little greater, distance from the main hotel district of the city as is respondent's stockyard, and that the same situation applies at Omaha (T. 126). With respect to Kansas City there may be a number of little hotels in the neighborhood of the stockyard district. I do not know as to that, but the distance from the stockyard to the uptown hotel district is practically the same, possibly a little bit less than at St. Joseph.

Cross-examination:

I have never operated a public stockyards except in a general way, having more or less supervision over the methods of operating railroad stockyards, which I have discussed in my direct testimony with respect to my employment by various railroad companies. I have never been on the pay roll of a public stockyard, except at the time I was connected with the M. K. & T. R. R. Co., which operated a public stockyard at Forth Worth, known as the Hodge yards. I did not operate that stockyard. I was not the superintendent, but I had more or less to do with determining its operating policy (T. 127) with respect to its physical operation. That is not the same as the yard now known as the Fort Worth yards. It was closed a great many years ago.

[fol. 341] Mr. F. W. Mollin, a witness called by the Government, being duly sworn testified in substance as follows:

Since April 1, 1929, I have been Secretary of the American National Livestock Association with headquarters at Denver, Colorado. For 9 months prior thereto, I was employed by a committee of bankers liquidating a ranch property in Nebraska. This ranch had been a large cattle outfit but at the time I was with them they handled only hogs.

For over 22 years prior to that I was with the Kent-Burke Company a large cattle feeder in the State of Nebraska, who also handled hogs. I held with the Kent-Burke Company almost every position from office boy up

(T. 143) and for the last several years of my service with [fols. 342–346] them, I was Treasurer of the company. The last two years following Mr. Burke's death, I was General Manager. As Treasurer and General Manager I was in full charge of the finances of the company and in addition we handled considerable private financing for members of the Kent and Burke families, in the way of mortgage loans and investments of various kinds. In respect to my experience in the actual marketing of livestock, I lived in Omaha, Nebraska, from 1912 to 1928, and I made it a point to go to the stockyards practically every day that the Kent-Burke Company had a shipment of cattle or hogs on that market. In addition to that I made trips to Chicago once or twice a year and an occasional trip to Denver, more particularly during the last two years I was with the Kent-Burke Company when I was in charge of their cattle buying operations. The Kent-Burke Company's shipments varied between Omaha and Chicago depending upon the market conditions but on an average they shipped about 3500 cattle a year and about 4500 hogs (T. 144). All of that livestock was not shipped to terminal markets. In the last few years the hogs went quite often to Fremont, Nebraska. We have shipped hogs to Missouri Valley, and to Valley, Nebraska, also occasionally to Grand Island, Nebraska. When I was with the Peterson Company at Norfolk, Nebraska, we sold hogs too directly to Armour and Company. During the last 7 years I was with the Kent-Burke Company they developed a cattle selling business, selling cattle to the neighboring farmers, and that business grew from nothing in 1921, when it started, to 3700 or 3800 cattle the last year I was with them. Most of them were bought on the Denver market and brought down to Genoa and Silver Creek, Nebraska, and sold to neighbors at those points (T. 145).

[fol. 347] Stock Yard Hotels

I could not say that I know the attitude of livestock shippers with reference to the necessity or desirability of a hotel being maintained in or adjacent to the stockyards. I remember that years ago there used to be some criticism of the Omaha stockyard because there was no very desirable place near the yards at which to stop, but I do not see how the providing of such a hotel could be considered a

stockyard service. It was a good many years ago when I heard the Omaha stockyard criticised in this respect and [fols. 348–377] there may be a better place there now, I do not know whether there is or not (T. 155). A good many shippers accompanying their livestock to market, particularly the small shippers—they make a kind of holiday of it. The big shippers go occasionally, of course. Where they have headquarters in the city where the stockyard is located, they naturally are on the market more than if they have headquarters in the country. I am much more familiar with the situation at Omaha than any other place, but I think that a great many shipments from our territory, which was over 100 miles out of Omaha, arrived there around midnight.

[fol. 378] Reproduction New and Less Depreciation

Mr. Hermann C. Henrici, a witness called by the Government, being first duly sworn (T. 226), testified in substance as follows:

Direct examination:

I am chief valuation engineer, Packers and Stockyards Division, Bureau of Animal Industry, United States Department of Agriculture. The duties of that position are to supervise the inventory and appraisal of stockyard [fol. 379] properties under the Packers and Stockyards Act of 1921. I am a graduate of the Manual Training School of Kansas City, Mo., class of 1922, completing the courses of steam and electricity; also a graduate of the Massachusetts Institute of Technology, class of 1906. I have been associated with the engineering department of Armour & Company; have been in the manufacturing and construction business (T. 229); am now associated with the firm of Henrici-Lowry Engineering Company, Kansas City, Missouri, as consulting engineer; have designed and supervised the construction of various utility properties; have had charge of the appraisal of public utility properties throughout the States of Missouri, Kansas, Oklahoma, Idaho, Colorado, Arkansas, New Mexico and Texas; and also as engineer for the Government have made appraisals of the stockyards at Peoria, Ill., Nashville, Tenn.,

Chicago, St. Paul, Denver, Kansas City, St. Louis, Fort Wayne, Pittsburgh and St. Joseph (T. 230).

The first appraisal of respondent's property was completed about August, 1927, and in September, 1929, that appraisal was brought up to date as of June 30, 1929. The general method employed in making that appraisal was as follows: We obtained from Mr. Kosters, respondent's chief engineer, copies of all tracings and drawings which respondent had of its property. These blue prints, copies of which have been introduced in evidence, were taken into the field and there checked from actual measurements of the property. Wherever there were no drawings, sketches and measurements were made. From that field work calculations were made as to the quantities of material and per cent condition of the property noted by the various engineers and checked by the chief valuation engineer. The vouchers for the purchase of materials were transcribed at [fol. 380] my request by the auditors. Respondent's payrolls were also transcribed and analyzed. The schedule of union labor wages was obtained from the various labor organizations in St. Joseph. Letters were written to various material dealers and contractors and manufacturers to obtain prices of material and labor (T. 231). Labor formulae were calculated based upon the labor conditions found in St. Joseph and the union scale of wages was applied to such formulae and compared with such contract prices as were obtained. These unit prices were then applied against the quantities and extensions made and embodied in the report included in this record as exhibits. All of that work was done under my immediate supervision and I have checked and compared and analyzed it. The papers which have been marked for identification Government Exhibits 4-E to 4-K, both inclusive, are the inventories and appraisals and other papers to which I have referred. They do not constitute all of the papers to which I have referred; the others are certain drawings contained in six envelopes introduced in the record as Government Exhibit 4-C.

Thereupon the Government offered in evidence as Government Exhibits 4-C and 4-E to 4-K, both inclusive, the papers as to which the witness has testified (T. 232). Counsel for respondent objected on the ground that the Secretary of Agriculture is not authorized to make an appraisal

of respondent's property and counsel for the Government called attention to his understanding that it had been agreed that the similar objection theretofore made (see transcript pages 39 and 40) applied throughout the proceeding to evidence respecting items of valuation and the Examiner stated that that was also his understanding and that he further understood that the objection would be considered as overruled and an exception taken. Further and [fol. 381] particular objection was made by counsel for the respondent to Exhibit 4-K (an analysis of stockyard wages) on the ground that it was immaterial and irrelevant in that the witness had used in his appraisal the union wage scale rather than the stockyard scale. The objections were overruled by the Examiner and all of the exhibits received in evidence (T. 233). Whereupon counsel for respondent suggested that Government Exhibit 4-K was not in harmony with the spirit of the agreement reached by counsel respecting Government Exhibit No. 10 (the agreement of engineers as to appraisal). Accordingly, counsel for the Government withdrew Exhibit 4-K for the time being (T. 235).

Condition Per Cent

The condition per cent shown in the column headed "Government Exhibit 4-I" on pages 2 and 3 of Government Exhibit 10 was obtained by an inspection of the property [fol. 382] in the process of making an inventory, and at the conclusion the engineer making that appraisal set down his opinion as to the per cent condition. Those per cent conditions after being inspected by the chief valuation engineer were discussed with the engineers making them and the final per cent condition determined. The third column entitled "Revised Government Percentage Conditions" was determined on December 2 and 3, 1929, during this hearing. Due to the difference of opinion between Mr. Kosters, whose figures are set down in the column headed "St. Yds." and the figures appearing in the column entitled "Government Exhibit 4-I," Mr. Schramm and Mr. Galbreath, two government engineers working at my direction and independently of each other in so far as any knowledge of the previous figures or the figures of each other were concerned, re-inspected these properties. The result of the inspection and of each of those men's independent judg-

ment is shown in Government Exhibit 10-A on pages 5 and 6 and the revised government figure (Government Exhibit 10, pages 2 and 3) was determined by taking either the average of Mr. Galbreath's and Mr. Schramm's opinions or the highest percentage if the percentage shown in the column headed "Government Exhibit 4-I" was higher than the opinion of Mr. Galbreath or Mr. Schramm (T. 236). In other words, wherever the original per cent condition was higher than either of those determined by Mr. Galbreath and Mr. Schramm, the original figure was included in the column headed "Revised Government."

In arriving at the condition per cent as expressed either in Government Exhibit 4-I or in the revised government figures, we considered the so-called life and age method of ascertaining actual depreciation only in so far as it was apparent from an inspection of the property. That is to say, when I examine two buildings, one of which had just been [fols. 383 & 384] completed and the other was built fifty years ago, I am not interested as to the exact date when the buildings were completed, nor am I particularly interested in the exact number of years they have been built, but from an inspection of the buildings it is quite apparent that one is older than the other, and in so far as such an inspection reflects the age of the property, and only to that extent, I consider the age in determining condition per cent (T. 237).

[fol. 385] Audit of Respondent's Records

It was agreed that the paper entitled "Report of Audit for Period January 1, 1928 to June 30, 1929" which has been marked for identification "Government Exhibit 11" was prepared by auditors for the government and checked with auditors for respondent, that it clearly reflects respondent's books for the period which it purports to cover and that it is in proper commercial form. The respective counsel also agreed that $70,000 is the correct and proper amount to allow respondent as working capital (T. 243). In this connection counsel for the Government stated that he did not wish it to be understood that the Government concedes that the operating expenses and net operating income shown in the exhibit constitute the proper amounts of those items for rate making purposes and counsel for respondent stated that while the respondent

contends that the exhibit does show the proper net income for rate making purposes, the right of the government to the position is recognized.

H. E. BUFKIN, a witness called by the Government, being first duly sworn, testified in substance as follows:

I reside at Omaha, Nebr., and have for a little over five years been field auditor for the Packers and Stockyards Division, United States Department of Agriculture (T. 244). I had 12 years' actual experience as an auditor with [fol. 386] two railroads prior to entering the Government service. I completed a course in public accounting with the International Accounting Society of Chicago, Ill. For 6 of the 12 years I was with the railroad companies I was senior accountant. In that position I had charge of general accounts and supervised the accounting force of the Galveston, Houston & Henderson R. R. Co., which is a joint line with the Missouri, Kansas & Texas, and the International Great Northern at Galveston. I went immediately from that work into Government service. My duties in my present employment are auditing the accounts and records of stockyard companies, commission men, and dealers for the Department of Agriculture. I have been most recently engaged in that work at St. Joseph and am familiar with Government Exhibit 11 (T. 245). Under the direction of Mr. Bachmann I supervised the making of that audit. I was engaged in that work 10 weeks, during which time I was located at St. Joseph. I was assisted by accountants Hart, Baughman, and Muse, who were working under my immediate supervision.

I prepared the first two sheets of the document marked for identification Government Exhibit 12 (T. 246).

Thereupon counsel for the Government and respondent agreed that the information contained on the first two pages of Government Exhibit 12 is included in Government Exhibit 11; that the respondent's net profit for the year 1928, as shown on its books, is $252,282.66, and for the first half of 1929, $117,556.81; and that the deductions and additions made by the witness Bufkin, as shown on the first two pages of Government Exhibit 12, have been agreed to

by respondent's auditor as being proper additions and deductions for the purposes of this proceeding.

There being no cross-examination, this concluded the testimony of the witness, and he was excused (T. 247-8).

[fol. 387] JOHN J. BACHMANN, a witness called by the Government, being first duly sworn, testified in substance as follows:

I reside in Washington, D. C., and since January 7, 1929, have been in charge of Audits and Accounts, Packers and Stockyards Division, Bureau of Animal Industry, Department of Agriculture . I have been an auditor since the year 1916. I graduated from St. Thomas College of St. Paul, Minn., in 1915; graduate work for one year thereafter in philosophy and medicine, and one year in law, and two years in accounting. I taught elementary, advanced, and specialized and cost accounting, business finance, and other business subjects for six years in three different schools in St. Paul and Minneapolis. Two of those years were at the Bishop Brissman School of Accountancy at St. Paul. During a half year I was dean of the American Institute of Commerce, which is a Walton School in Minneapolis, and a year and six months I was at St. Thomas College, St. Paul.

As to practical training I spent six months with the St. Paul Gas Light Co. as a clerk in the accounting department, and a year and a half as assistant to the chief accountant of the St. Paul Water Department (T. 249). For approximately a year in 1919 I was practicing public accounting. From 1920 to 1924 I was employed as public accountant by Bishop, Brissman & Co., certified public accountants at St. Paul. In 1924 I resumed the practice of public accountancy for myself and so remained until I took my present position with the Government.

During the course of my public accounting practice, both with Bishop, Brissman & Co. and for myself, I have worked on and supervised audits of the Bank of North Dakota, at Bismarck, the Home Building Association of the State of [fol. 388] North Dakota, the State Mill at Grand Forks, N. Dak., the city of Eveleth, and the water department of that city, the city of St. Cloud, Minn., and its water depart-

ment, the Mayo Clinic at Rochester, Minn., the Kahler Corp., at Rochester, Minn., and a number of large and small firms in St. Paul and Minneapolis; as well as the Central Lumber & Coal Co. of Dubuque, Iowa, the Brictsom Tire & Mfg. Co., Omaha, Nebr., and the United Packing Co., South St. Paul. I also acted as public accountant to the city council; made an audit of the State of Minnesota for eight years, and acted in an advisory capacity to the Minnesota Securities Commission.

In connection with my private practice I did considerable regular commercial accounting work (T. 250). I also have had experience in connection with utility rate cases. I have made surveys of statements submitted by public utilities to determine whether or not the amount of securities that they issued was in harmony with the worth of their property, and also whether their rates were adequate or inadequate. I engaged especially in this work in respect to the rates of street car, telephone, gas and light companies in my capacity as public accountant of the city of St. Paul and as advisory accountant to the Common Council. I have never been employed by one of the utilities.

I have the degree of Certified Public Accountant from the State of Minnesota, and also a college degree of Bachelor of Science in Commerce.

My duties with the Department of Agriculture consist of supervision of field accountants and making audits for rate purposes, also trade practice audits and those usually made to bring up to date information on all stockyards, also the gathering and drawing up of statistics relative to stockyards, packers, commission men, dealers, and brokers [fol. 389] (T. 251). Since I have been in the Department of Agriculture I have assisted on some audits, particularly those at Denver, St. Joseph, and Nashville. Also I have made trips into the field to assist accountants in beginning audits. I spent approximately two weeks at St. Joseph in connection with the preparation of Government Exhibit 11, and since its completion have spent nearly two weeks analyzing it. I have a very general knowledge of respondent's books (T. 252). I am familiar with Government Exhibit 12, the first two pages of which were prepared by Mr. Bufkin, and the remainder, except pages 10 to 13, both inclusive, by me. Those pages, which constitute the

schedule of depreciation, were prepared principally by Mr. Henrici and his office force. They gave me the reproduction new values of respondent's structures and equipment, the life thereof in years, the annual rate of depreciation. and a scale of the depreciation by the straight line method. Those calculations were checked and rechecked by Mr. Bufkin and me. I do not think those pages reflect any of the changes shown in the stipulation between Mr. Henrici and Mr. Kosters. Relative to that, let me say that the whole report (Govt. Ex. 12) is subject to modification by reason of certain changes which have been made since this hearing began, in so far as they relate to the appraisal of respondent's property. As far as I was concerned this was more or less in tentative form, and there are some changes that I will mention as I go through it (T. 253).

Net Operating Income

Referring to page 3 of Government Exhibit 12, the net profit per audit is stated as $252,929.09. To this amount are to be added all of the items under the head of "Additions" and from the new total are to be deducted all of the items headed "Deductions," giving the net operating income as $355,921.81.

[fol. 390] The first item under "Additions" is "Casualty Insurance Refund, $9,799.43." On examining the surplus account of the respondent as shown in Exhibit D-B (page 5), of Government Exhibit 11, we found that respondent had received refunds on dividends on casualty insurance each year for the years 1920 to 1929. We came to the conclusion that this was not an extraordinary item but a continually recurring one and in the nature of a credit to the casualty insurance expense. That is to say, respondent paid the gross amount of casualty insurance and when, later in the year, the insurance company computed the rate to be effective for that year, there was a return of the difference between the original amount paid and the amount finally found actually to be due. This credit should go against the expense account rather than to the surplus account.

The next item, "Elimination Depreciation—$65,035.80" is supported by the schedule contained on pages 9 to 13, both inclusive, of Government Exhibit 12 (T. 254). We

took the straight line depreciation computation made by Mr. Henrici with its total of $117,229.00 as shown on page 13 (Government Exhibit 12) and reduced that on a 6% basis to a sinking fund, computing a separate sinking fund on each and every asset which respondent owned. So reduced we found a total of $55,450.00, which figure appears in the first column on page 9 (Government Exhibit 12). Computed on a composite life at 6% annual sinking fund basis, the comparable figure would be $52,812. The figure of $55,450 includes both used and useful as well as unused and unuseful property. The difference between the two figures ($55,450 and $52,812) arises by reason of the fact that the former is the aggregate of the sinking funds determined for each separate item of respondent's property, whereas the latter is computed upon that property as a composite whole.

[fol. 391] After ascertaining the figure $55,450, I eliminated depreciation on the property classified by Mr. Christensen as outside. The resultant figure was approximately $51,000 to which I added an arbitrary amount of $12,000 as a cushion so that if there should be any loss because of non-investment of whatever money might be put into the sinking fund, or for any other lapses, there would still be no doubt that the depreciation allowed would, when invested at 6%, over the period of time determined, be sufficient to replace respondent's assets after they come to the end of their service life (T. 255). As I see it there are certain changes to be made in this schedule. For simplification I use a 6% basis computed annually. I feel that the rate should be changed to about 6 3/7% computed on a semi-annual basis. The reason for the 6 3/7% is that when we analyze respondent's balance sheet (Exhibit A of Government Exhibit 11), we find that the company had invested in all assets $6,811,770.13. That is the total asset figure, plus the amount shown, put under fixed assets as reserve for depreciation of buildings, improvements, equipment, furniture and fixtures. Then I eliminated from what I considered the assets essential to the respondent's operation, the amount of investment that had been provided by the mortgage bonds, by the actual capital stock, by the surplus and undivided profit and by the current liabilities. The remainder was the amount of assets equal to the re-

serve for depreciation on the buildings, improvements, equipment, furniture and fixtures, showing that the respondent had invested these funds in certain of their assets which I assume to be first those which were least necessary to their operations; that is to say—in the St. Joseph's Belt Railroad and in loans to affiliated companies. I computed that amount at approximately $600,000 (T. 256), and assumed further that the remainder of the $1,400,000 set [fol. 392] aside for depreciation was invested in essential assets. I also assumed a rate of return of 5% in the investment in the St. Joseph Belt Railroad Company and a return on the remainder equal to that which is to be allowed respondent as a fair rate of return. I did not know at that time what the latter figure would be but later I assumed it to be 7½%. Therefore I calculated 6/14 of the 5% return on the investment in the Belt Railroad and 8/14 of the 7½% return on the remainder resulting in a rate for the investment of the sinking fund of 6 3/7%. As stated before I computed this on an annual basis. However, respondent provides for a monthly depreciation and strictly speaking the sinking fund should be computed on a monthly basis. However, I did not care to draw the computation that fine. It would be very difficult and tables are not available for it so I felt that the semi-annual basis was fair. The rate of 6 3/7% is based upon respondent's investing at 7½% that portion of the sinking fund which is invested in essential assets. As a result of these computations I found the proper amount to be included in the annual expense account for depreciation to be $63,000. There was an additional reason for that. Referring to page 14 of the Government Exhibit 12, there will be found a statement and comparison of repairs and depreciation for the year 1928 (T. 257). The sum of the two items is approximately $174,000. That is about 16% of the gross income. I did not have the files available but I checked over what information we had at St. Joseph to see how that compared with other stockyards and I find that in the case of Denver the comparable percentage is approximately 7, and at St. Paul although the amount of repairs and depreciation seems substantial, they were only 8 or 9 per cent of gross income. I felt, therefore, that an allowance of 17 per cent for re- [fol. 393] pairs and depreciation was excessive. The reason respondent charges such heavy depreciation is to some

extent reflected in the appraisal which apparently was made in 1922 or 1923. It will be noted that the depreciation allowance in the former year was $59,345 and in 1923 it was $120,000. In the latter year respondent began depreciating on an appreciated value, the result of which is, that the users of its facilities are putting into the company an amount equal to the depreciation on its unearned increment. I consider that unfair and feel that if respondent be allowed to continue charging off depreciation on approximately the basis it was using before the appraisal of 1922 it would be fair to respondent.

As yet I have not computed depreciation on the basis of 6 3/7 per cent computed semi-annually. That is the reason why I have shown on page 13 of Government Exhibit 12, the difference between the results of computations at various rates (T. 258). The fact that it is to be computed on a semi-annual basis will decrease further the sinking fund installments. What I have said does not imply at all that the prewar value of respondent's property should be used as a basis but costs of these assets were not available and we could not know what the depreciation on costs would be. However, I do not feel that respondent should be entitled to a rate on the present value less depreciation and also be entitled to a depreciation on an appreciated worth. I do not feel that they are entitled to it (T. 259).

"Mr. Rynder (Counsel for Respondent): I just wanted to get your position clear, that is, that in writing off our depreciation, we are not entitled to take as a base, the present-day value of property.

The Witness: Well, I wouldn't say that. However I do not feel——(break)

Mr. Rynder: I would like to know definitely about that."

[fol. 394] (Whereupon the question as heretofore recorded was read by the reporter.)

"The Witness: That is what influenced me to adopt this method, Mr. Rynder. I used that not as a sole and definite guide, but as a guide, it was one of the considerations why I adopted the sinking fund method.

Mr. Rynder: Well, but sinking fund method or otherwise have got to be worked on a certain value of the property, has it not? I certainly want to get that clear although I don't want to cross-examine on it (T. 259).

The Witness: It does have to be worked on a certain value, yes sir, and the value which I used Mr. Rynder was Mr. Henrici's reproduction less depreciation value, the value that he gave.

Mr. Rynder: Well, is that proper?

The Witness: Is that proper? Well, I do not know whether it is proper or not, but I would say the proper method is on cost, but we could not get that figure."

Assuming that a certain structure at the stockyards cost $100 to produce in 1916 and would cost $150 to reproduce in 1929 I think that the depreciation ought to be figured on the basis of the $100 and that respondent should put in the additional amount it takes to reproduce the item.

The $63,000 allowed for depreciation as shown at the bottom of page 9 of Government Exhibit 12 is not calculated upon the basis of 6 3/7 per cent compounded semi-annually (T. 260) but is computed on a 6 per cent annual basis and the facilities classified by Mr. Christensen as joint were considered as being used and useful for the purpose of the computation which arrived at this $63,000. And the basis on which that depreciation was calculated was the valuation given me by Mr. Henrici which I understand as being reproduction less depreciation. The $63,000 is a tentative figure subject to whatever the secretary considers as used [fol. 395] and useful and whether he thinks the rate should be changed to 6 3/7 per cent or the computation changed to a semi-annual basis. The stipulation which has been entered into by the engineers will affect the amount of this depreciation allowance (T. 261). The additions either by new items going into the appraisal or by change of condition per cent will naturally affect the base which Mr. Henrici gave me for computation of depreciation on a straight line basis, which is the base I used in computing the sinking fund method. Regardless of what these changes finally may be I can, from the information I have here and when the final figures are before me, ascertain the proper amount of depreciation.

There was another factor which caused me to use the sinking fund method of depreciation. It is not of primary importance, however, it led me to the conclusion that the sinking fund method was fair. The condition per cent as shown by Mr. Henrici's appraisal of 1927 was 76.3. His

appraisal of 1929 stated it as approximately 76. Mr. Kosters in 1929 found it to be approximately 85. In 1922 the American Appraisal Company appraised respondent's property and their condition per cent was either 83 or 87. Respondent has set up on its book for depreciation an amount equal to over 50 per cent of its depreciable assets, most of this having been set up since 1922 (T. 262). On examining the only asset of which I knew the date of acquisition or construction, namely, the Exchange Building, I felt that if the rate of depreciation which respondent is setting up on its books for that asset had been provided regularly from date of construction to 1929 the amount accumulated would be $60,000 in excess of even the reappraised value of that asset. As I saw it, respondent had deferred setting up on its books depreciation for a number of years and since 1922 it was covering each year some of that deferred de-
[fol. 396] preciation which should be turned back to the years in which it should originally have been set up. The appraisal by the American Appraisal Company to which I have referred was one made for respondent in the year 1922. The amount of $65,035.80 shown on page 3 of Government Exhibit 12 was arrived at by deducting from the depreciation of $128,035.80 set up on respondent's books for 1928 the $63,000 allowed as above described (T. 263).

In the course of the audit analyses of the plant account and repair account were made and I considered them in arriving at my conclusion as to depreciation. The depreciation allowance of $63,000 plus the repairs which were allowed in the full amount shown on respondent's books equal approximately Mr. Henrici's computation of straight line depreciation. That is to say the $63,000 depreciation allowance plus the repairs, $46,082, equals approximately $110,000, and Mr. Henrici's computation of annual depreciation allowance on the straight line basis was $117,000. Another thing we considered was the percentage of repairs and depreciation charges to total gross income. I felt that 10 per cent would represent a liberal allowance.

The items earmarked on page 3 of Government Exhibit 12 "O. R. E." which stands for Outside Real Estate (T. 264) are according to the same classification on respondent's books. Those items are shown on schedules 30, page 97; 31, page 98; 32, page 99; 35, page 100; 34, page 101; and 35, page 102 of Government Exhibit No. 11. Being so set

up on respondent's books I, of course, eliminated them and if other of respondent's property be classed by the secretary as nonused or nonuseful or if some of these items be classed as used and useful, adjustments will follow of course.

On page 5 of Government Exhibit 12 is shown a detailed schedule relative to the item "Donation." This [fol. 397] amounts for the year 1928 to $1,485.72. Of this amount $155.47 is allowed and $1,330.25 is disallowed, which figure is shown on page 3 of Government Exhibit 12. The total donations shown on respondent's books for the first six months of 1929 are $1,071.00 of which $500.00 is allowed, $571.00 disallowed, in Government Exhibit No. 12. The question that came into my mind when I looked over these donations was whether or not any benefit would result from them to the users of respondent's facilities, and if so was there a real benefit or was it too remote. If it were too remote I feel that item should not be allowed (T. 265). A further question was who should pay the donation; should it be the users of the facilities or respondent's stockholders? I felt that the stockholders should pay unless there accrued to the users of the facilities a benefit from the donation. The 1928 donation of $145.47 to the Pig Club was allowed because I felt that anything which encourages sale of a commodity for which the company renders service should be allowed. The same reasoning applies to the donations to the Boys and Girls Club. I felt that the donation to the Good Roads Association was a real business getting expenditure in that if respondent encouraged the building of good roads it might increase the truck-in business to respondent's yard in preference possibly to some other yard (T. 266) and I felt that there was a benefit accruing to the users of the facilities in having good roads over which to come to this particular market.

It was my opinion that the item "Fiscal Agents, Trustees" was made in securing money to give the respondent's security holders the added protection of registration with a trustee and therefore was in the nature of additional bond or interest expense and as such should be charged against operating income which respondent will be allowed under a fair rate of return. The same reasoning applies to the item "Bank Exchange—$28.10." On page 6 of Gov-

[fol. 398] ernment Exhibit No. 12 is a schedule relative to the item "Miscellaneous Administration—$2,816.86" on page 3 of said exhibit. I challenged the item "$1,500 Proportion of Maintenance, Chicago Stockyards Company" because I did not know just exactly what kind of expense it was to cover. The same reasoning applies to this as to the donations. If the benefit was close enough to the users of respondent's facilities I allowed it. If the benefit was too remote it was disallowed. The item of $1,500 above referred to is set up in Government Exhibit No. 12 in the same form in which it appeared on respondent's books (T. 267).

The elimination on page 3 of Government Exhibit 12, "Taxes, R. E. and P. P., $13,873.78," is explained by schedule on page 7 of the same exhibit, which is a tentative and approximate computation subject to change as the Secretary may find certain properties of the respondent to be used and useful and may find the values of such properties. The computation on page 7 covers the year 1928. On page 8 is a similar computation for the first six months of 1929. In making the disallowances shown on pages 8 and 7, which resulted in the elimination appearing on pages 3 and 4, I followed Mr. Christensen's report. I did not go into fine details; I used approximate ratios. Information as to taxes paid was not set up on respondent's books so that it readily could be applied to the separate parcels of property. The basic information which enabled me to apportion the taxes to the various tracts was obtained from the county records (T. 268). Information bearing on these taxes will be found in schedule 90 on pages 172 to 179 of Government Exhibit 11.

The item "bond interest" appearing on page 3 of Government Exhibit 12 is a profit charge against the net operating income, which is to be allowed the company under [fol. 399] a fair rate of return. That is to say, respondent will be allowed a rate of return on the fair value of its property, and that value may be represented in its capitalization by bonds and stock. The interest on the bonds has the first claim against the income. The effect of this adjustment which I made has been to add that back into operating income.

I turn now to that portion of page 3 of Government Exhibit 12 which covers the "deductions." The first is "lease

income, $4,322.04." The total amount of such income, as shown by schedule 17 in Government Exhibit 11, was $4,658.04. I have eliminated all the income of that nature except that from the yard telephone booths (T. 269). It is my purpose in this to eliminate the income from items considered by Mr. Christensen as not used or useful. If the expense relative to those items is to be excluded, the income also should be. That elimination covers rent of right of way, sheep shed rentals, ground rent, house rent, stockyards industries, outside real estate industries, sale pavilions, and all the outside real estate income accounts (T. 270).

Mr. Bufkin eliminated the item "bad debts" (page 1 Govt. Ex. 12). I restored it, however, because it was a small item of only $94.23 and I believed it to be an ordinary expense which is incurred in the conduct of the business (T. 271). There is no schedule covering that in Government Exhibit 11. I would not under all circumstances allow bad debts as a charge against a business, but where it is a small amount and is incurred in the ordinary conduct of the business and is not in the nature of a loan, I think it should be allowed. If it were in the nature of a loan, I would not allow it, whether large or small. In that event it would be an extraordinary item, and the effect of allowing it in one year would be to charge it into the rate schedule for every [fol. 400] year (T. 272). I would eliminate extraordinary expenses. However, where such an expense might be incurred at irregular intervals, I would say the best way to handle it is to allow an annual charge in the nature of a reserve for contingencies (T. 273).

The item "rent of right of way" is eliminated from income for the same reason as the preceeding item, "lease income," because the railroad is classified as not being used and useful for stockyard purposes, and the income from it should be eliminated if the property itself is eliminated.

The item "interest received" means interest received on loans and is shown on page 103 of Government Exhibit 11. This item is deducted for the same reason that the interest paid is eliminated—namely, that any interest which respondent receives on securities would also follow after the net operating income (T. 274).

Page 4 of Government Exhibit 12 is of the same nature as page 3 but covers the first half of 1929 rather than the year 1928, and the same explanations apply to the various items. The computation on page 15 of Government Exhibit 12 was made for comparative purposes and to show respondent's dividend policy.

Analyses of respondent's plant account will be found in Government Exhibit 11 on pages 20-33, both included (T. 275). I stated that pages 21 and 22 contained information with reference to respondent's plant account, including the stockyard building and improvements. The period of time covered by that is from the date of the appraisal in 1922 to June 30, 1929. That part of the exhibit purports to be a reflection of the valuation of the various stockyard buildings and improvements, and additions and deductions that have been made to those asset accounts over that period of time. On that schedule the retirements are indicated by red [fols. 401-404] figures, and the additions by black figures. From that information it appears that since 1922 there have been net additions to the buildings and structures approximating in value $50,000. That appears on page 22. By net additions I mean the difference between additions and retirements. The total value of retirements during that period was approximately $16,500 (T. 276), and the total value of additions and betterments was approximately $66,000 to $67,000. I could not tell from respondent's records what its policy has been with reference to charging the plant account and charging the repair account when improvements or additions to property are made. However, I gathered the impression that items which may be considered in the nature of a replacement or betterment may be charged into a repair account, but such items could not be determined as replacements or betterments from the records of the company (T. 277). I simply could not tell which they were, but I found the repair account and the maintenance account listed in respondent's books. The basis of value used by respondent in writing off retired items of property is the appreciated worth as set up on its books by reason of the appraisal of 1922. In other words, when an item of property is retired, it is retired at the 1922 appraisal less whatever depreciation has been written off against it since that time (T. 278).

[fol. 405] Probable Receipts at River Markets; Effect of Divergent Rates at Those Markets; Advisability of Stockyards Hotels

CHARLES E. COLLINS, the witness called by the Government, being first duly sworn, testified in substance as follows:

For about 23 years I have resided in Kit Carson, Colo. I am engaged principally in the cattle business but I have a bank at Kit Carson. I raise cattle on my ranch of 40,000 acres about six miles west of Kit Carson. I run about 2,500 cattle annually. I run a cow herd and raise calves and sell them usually as yearlings (T. 479). During the last few years, since I have been on the yearling basis, I have been selling mostly direct to people in the corn belt country. I ship my cows, fat cows, and heifers to the public markets, usually Denver or Kansas City, but mostly Kansas City. In [fol. 406] the last two years I have started in on a feeding campaign and am now feeding about 300 calves. I have not made any shipments to St. Joseph for five or six years.

I belong to the American National Livestock Association and the Colorado Stockgrowers Association (T. 480). I am one of the vice presidents of the American National.

I have been in the catttle ranching business all my life.

I am president of the Kit Carson State Bank. I am also president of a little association in eastern Colorado called the Big Sandy Livestock Protective Organization.

As to whether or not the producers of range cattle desire the Secretary of Agriculture to investigate the rates and charges on the St. Joseph stockyards, I know the views of a few people with whom I am intimately acquainted. I have talked with a good many cattle men that I know in the West who think it is perfectly right that someone should have the right to look into these matters to see whether or not we are paying an unfair price for services. That was part of the claims that were made during the Packers and Stockyards (T. 481) legislation, that we felt that we ought to have some arbiter at public stockyards, to tell us whether we were getting a square deal or not. We had no other means of finding out. I presume that where the freight rates to various stockyards are the same and there was 5 or 10 cents a head difference in the market charges, it is barely possible

that a few people might, if they felt that they could get just as much at one market as another, try to save that difference but I don't believe it would make any material difference at all to enough people to have any effect on receipts at any particular market. A great many people have their ideas about different markets. I know some people go to one market that (T. 482) I am sure they would go to against [fol. 407] another if there wasn't any yardage at all. Someone just has an idea that he could get a little better price at one market than another. If they feel that way I don't believe they would be diverted by any small difference in yardage charge at all but there would be some people upon whom it might have some effect. I don't believe a difference in yardage rates of 5c a head would, under ordinary market conditions on the various stockyards, make a substantial difference in shipments.

The witness being questioned as to the probable future receipts of livestock at St. Joseph stated that he was not competent to say as to what portion of such receipts might come to St. Joseph. I have my views as to what would be the general receipts at all the markets up and down the river but as to the St. Joseph market alone I don't know as I would be. Whereupon the witness was requested to state his views as to the river markets generally. To this question counsel for respondent objected to (T. 484) on the ground of immateriality. The objection being overruled and exception noted, the witness answered as follows:

"As to all the public markets up and down the river, and east of the river, I feel that the market receipts are about at the peak. That is my feeling about the matter of cattle receipts at all these different stock markets, unless some of these newer stockyards in the West, there is a possibility in the next few years that they may grow, but I feel these river markets, eastern markets, have practically reached their peak in receipts."

I am speaking now of cattle receipts (T. 485). Such receipts may vary a little from year to year but I am speaking of the period of the next fixe or ten years. I feel that in the West in the next few years there will probably be some increase in the production of cattle but not very materially. The western country already has about all the cattle it can

[fol. 408] stand. I don't believe our cattle population will increase very much. I don't know as to whether cattle shipments to the river markets will decrease in the near future.

Stock Yard Hotel

I am not very well acquainted with the hotel in South St. Joseph known as the Transit House. I was there about twenty years ago. In a way I was acquainted with conditions at the St. Joseph stockyards at the time that hotel was built. I used to go to that market quite frequently with livestock years ago (T. 486). As I remember it years ago out there at the stockyards soon after they were established, it seems to me like it was very apparent that it was necessary to have a hotel out there at that time but I don't know anything about it in later years. The conditions that caused me to think it was necessary to have a hotel at that time were that it was far out of town. At that time I did not have as much business in town and I used to sit around the hotel at the stockyards a great deal among the people. I am not positive but I think there were street cars from South St. Joseph to St. Joseph in those days. I know they had hacks and cabs and that we used to drive up town. That was before automobiles became general. I do not accompany cattle to market nowadays (T. 487), not in the last fifteen years.

Charging Traders

It has always been a question in my mind about all these stockyards as to whether the total cost of maintaining the stockyards should be charged to the original shipper. I have always felt that other people using the stockyards ought to pay part of the necessary operating expenses; that the total expenses should not be charged to the original [fol. 409] shippers; and that the yard traders and other people using the stockyards should pay their proportion of the money necessary to maintain them (T. 489). I have heard a great many people say they think that ought to be done (T. 490).

Cross-examination:

If someone else had to pay some of this yardage the producer of livestock would not have to bear so much of it. People claim in the last analysis the producer would, but

I don't think he would. If some of the other fellows paid a third of it or a portion of it, the thing would adjust itself to the point where the producer would not be paying it all. By other fellows I mean the yard traders and people that use the yards for other purposes. If the yard trader would reduce his bid by the amount of the yardage it would not do any good (T. 490) if you were sure he did that. You would never be sure and the old saying is that "What you don't know don't hurt you." I don't think the trader would. I think in time it would adjust itself so he would buy the cattle just the same and take that part of the burden on himself and relieve the original shipper of a part of it. It is just a matter of fairness as to whether the original shipper would pay the whole expense or the other people that use the stockyards should help pay part of it. I don't know any place where this suggested system is being used but I have always thought it ought to be. Just felt that was a mistake the stockyards made by shouldering it all on to the original shipper. They just got started wrong.

I can remember very well in my early shipments of cattle to Kansas City when there were very few traders in the yard. About all the shipping that was done in those days was fat cattle bought from the original shipper and forwarded on to St. Louis from Chicago (T. 491). That was before the St. Joseph market opened. In the last 15 or 20 [fol. 410] years practically all of the stocker and feeder cattle are bought and handled by traders in the stockyards and they have the use of one-third or half of the stockyards. I have always felt the traders were pretty good sports and I don't believe they want to sponge anything off of anybody. If they had to pay their portion of it I don't believe they would kick about it. If the stockyards company had to have 35¢ a head to pay interest on their investment, or capital stock, or whatever it might be called, and the traders used one-third of the yards, one-third of the original shippers' fee should be cut off and put on the other fellow. In other words, when a trader buys stock that comes into a commission man's pen and moves it into his own pen, when the bill is made up on the sale of the livestock and the yardage is charged, instead of the 35¢ a head being paid by the seller of the livestock it would be divided in one-third or say 25¢ for the producer and 10 for the trader, or 15¢ for the trader and 20 for the producer. (T. 492). That would lighten

the burden on the original shippers. Of course if the trader was keen enough to do that for 15¢ a head he might add a cent or a cent and a half or something like that and I might be paying it, I don't know, but I think it would adjust itself. It would be just as high and there would not be any difference there. You would just divide the expenses between the people who use the stockyards. (T. 493). If I did not see it on my bill I would not know it was there. Cattle is all I know anything about. If there are any other people besides traders and speculators that get the use of the yards for nothing, my suggestion would apply to them. I do not know just who else gets the use of the stockyards for nothing. It might be the packer pays a little yardage once in a while if he comes there and uses it, but might be only a little. I would not have the packer pay yardage if he buys [fol. 411] livestock at the stockyards and then drives it over to his pens where he holds it long enough to run it into a packing plant for slaughter because he does not resell, but if he resells a charge should be made. My complaint is directed to the classes of people that resell on the market (T. 494).

[fol. 412] **Evidence Offered by Respondent**

Counsel for respondent then made the following statement. Heretofore respondent has made objections from time to time throughout the record to any testimony which tended to show the value of respondent's property, on the theory that the secretary (T. 284) did not have authority to determine the value of such, and has also objected to testimony which attempted to segregate, divide, cut off or deprive respondent of the right to earn on certain properties now owned by it. These objections were based upon the further ground that such procedure was not within the statutory authority of the Secretary of Agriculture. These objections, while made perhaps only at the beginning of the evidence were understood to continue throughout and apply to evidence of that character offered by the Government. These objections were overruled and exceptions noted. Without waiving the objections, respondent is now prepared to offer evidence upon the value of the property and also as to what property should be included as used and useful. In the event that the respondent's previous

objections be at any time sustained and the evidence offered by the Government be excluded, respondent would expect that the evidence which it offers in support of its value and as to its used and useful property should be likewise excluded. (T. 285).

Cost of Reproduction New and Less Depreciation

S. F. KOSTERS, a witness called by respondent, being first duly sworn, testified in substance as follows:

I reside in St. Joseph, Missouri, and am a civil engineer employed by the St. Joseph Stockyards Company, St. Joseph Belt Railroad Company, and the Union Terminal Rail- [fols. 413-420] road Company, as Chief Engineer. My elementary education was received in the grade schools of Chicago, Illinois; my academic education was finished at the Armour Institute of Technology of Chicago; my professional education was received in a four-year course in the University of Illinois, graduating in the year 1913. I then became for approximately a year construction engineer with the State Highway Commission of Illinois. After that, for a period of about six months, I was in the maintenance department of the Illinois Central Railroad Company, and then was transferred to the bridge and building department of the same railroad where I remained for about one year. In 1916 I was employed as chief engineer by a Chicago contracting firm (T. 286). Later I became superintendent of construction in charge of road and bridge work and still later was taken into the firm where I remained until I entered the army in the latter part of 1917. In the army I was assigned to duty as superintendent of construction in the Signal Corps on two aviation fields built on Long Island, New York. Later was transferred to the air service in which I remained until January, 1919. In the early part of that year I was sent by Swift and Company, Chicago, to assume my present position with the St. Joseph Stockyards Company. I am an associate member of the American Society of Civil Engineers. I have made numerous small appraisals of properties in connection with duties throughout my business career and since taking my present position have made appraisals of the St. Joseph Stockyards Company, St. Joseph Belt Railroad Company, The Union Terminal Railroad Company, and the Sioux City Railroad

Company. Also have testified in cases involving these appraisals both before the Interstate Commerce Commission and the Bureau of Finance. (T. 287). I have made an inventory and appraisal of the respondent's properties as of June 30, 1929.

[fol. 421] Transit House

Respondent's building known as the "Transit House" is a hotel of 60 rooms of which eleven are equipped with bath and running water, the other 49 have neither bath nor running water. In the particular instance of that hotel I absolutely would not regard that as an element of [fol. 422] obsolescence because the class of patronage obtained at that hotel desire rooms without bath and without running water and should that hotel be further equipped today with running water and baths throughout we would very steadily run away our patronage, even if we furnish the accommodations at the same price because they are just not used to bathrooms (T. 306). The Transit House was completed in 1903 or 1904. At that time it had a bar room in the basement. That was before my time, but I heard that it was well patronized. The space formerly occupied by the bar room is now used for storage and does not bring any revenue to the hotel. I do not regard the Transit House hotel as obsolescent now and I do not think it ever will become obsolete so long as it remains a stockman's hotel (T. 307). To the following question: "Then in setting up a depreciation reserve, in your opinion, the Secretary need not take into consideration any allowance for the Transit House becoming 'obsolete'" counsel for respondent objected (T. 308) and after discussion and argument extending over pages 309 and 310 the witness stated that he had not given enough consideration to the subject as yet to enable him conclusively to answer that question, saying that "In other words I have not arrived at a definitive figure which I would place on the life of that building."

As to whether or not the Transit House is well patronized my answer is "Yes" and "No". Very recently the room patronage has increased due to a new class of patrons appearing. The dining room patronage has always been poor and is poorer now than ever before (T. 311).

The new class of patronage is caused by the truck-in business which comes to the stockyards. They come all

through the night and day but a large number comes at [fols. 423-426] night. The average number of rooms occupied is entirely dependent upon the weather conditions. There might be an average of three days of one week of 50 registrations. The succeeding week the average for the entire week might be 15 registrations per day. It is entirely dependent upon other elements (T. 312).

[fol. 427] Land—Respondent's Appraisal

Mr. WILLIAM E. SPRATT, a witness called by the respondent, being first duly sworn, testified in substance as follows:

I am in the real estate business in St. Joseph, Missouri, where I have resided for over 40 years. During all of that time I have maintained and operated a real estate office in that city. Our firm is a member of the local Real Estate Board. We do a general real estate business including buying and selling on commission, making loans and appraisals and owning and operating real estate which is used for various purposes. My firm consists of my son, Elliott C. Spratt and myself. We do business under the name of Spratt Real Estate Company. My civic activities since coming to St. Joseph have been, President of the (T. 324) local Realtors' Organization, and for many years a member of its directory. I am now Chairman of its appraisal committee. I have at different times been president of the St. Joseph Chamber of Commerce and of the Rotary Club. For two terms, for 4 years, I was elected and served as Mayor of the City of St. Joseph. I served as President of the local Automobile Club, and am now a member of its directory. I was on the committee of citizens which drafted the present municipal charter under which St. Joseph now operates. During the World War I volunteered and served over seas for 8 months in war relief work. Before going to Europe I was for two years secretary of the St. Joseph chapter of the Red Cross Society.

In addition to my regular real estate business, I was employed by the Burlington Railroad Company several years ago to negotiate the purchase of some 60 or 70 houses [fol. 428] and lots in connection with the railway's contemplated widening of the South Fifth Street trackage in St. Joseph. Later I was employed by the same company

to secure for it the title to 100 houses and lots in the development of its "Florence Yards" which extends from Florence Road on the North down to the present St. Joseph property. (T. 324.)

In 1922 the City of St. Joseph employed Mr. F. M. Atkinson and myself to value before a court commission about 600 acres, consisting of some 1100 parcels of land which the City was condemning for parkway and boulevard purposes. I valued for the St. Joseph School Board, 34 lots in blocks 17 and 18 of the St. Georges addition. Those lots are not far from the stockyards property and lay North and East of the Exchange Building. Mr. Atkinson and I served at the instance of the city in the condemnation of about $1,000,000 worth of real estate upon which the $1,000,000 new city hall was constructed. We performed a similar appraisal service which resulted in the taking over by the City of another million dollars worth of property to be converted into a civic center. In 1917, Mr. Atkinson and I were employed by the six trunk line railroads entering St. Joseph to value all the land, exclusive of improvements, owned by the various carriers in the city. We found values totalling $8,000,000. In 1921, Mr. Atkinson and I were employed by the St. Joseph Water Company to value real estate holdings and rights of way of that corporation. In 1925, we appraised a number of properties for the St. Joseph Gas Co. and later we appraised the property of the Union Terminal Railway Company and that of the Belt Railway Company, of St. Joseph (T. 325). At times innumerable I have appraised much real estate here in St. Joseph for various corporations, estates and individuals. [fol. 429] I am the local examiner and appraiser of the value of all lands in St. Joseph upon which loans are made by the Santa Fe Savings and Loan Association and the Metropolitan Savings and Loan Association, both of which have headquarters in Kansas City, Missouri. Our firm was for many years the resident real estate brokers through whom the Standard Oil Company sold, purchased and leased all of its land holdings here in St. Joseph.

Mr. Atkinson is not and has never in any sense been my partner, except in those cases in which we have been employed together. On the contrary, for some forty years our offices have been in strict and active competition for business. It just happens that we have been requested many

times to appraise the same property for the same people (T. 326), and we have done a great deal of that work together.

Mr. Atkinson and I have appraised respondent's lands. Several times within the last 6 months we have visited those properties and were shown over all the several tracts. We were given maps and drawings indicating the properties as well as those of allied business. For many years Mr. Atkinson and I have been reasonably well acquainted with the various industries that constitute the stockyards district. The paper marked for identification, Respondent's Exhibit No. 4 is a summary of the valuation which Mr. Atkinson and I made of respondent's property (T. 327).

The population of St. Joseph is about 85,000 people. It is situate on the Missouri River 60 miles by rail north of Kansas City and 132 miles south of Omaha. It is 327 miles west of St. Louis and 490 miles from Chicago and 545 miles by river from St. Louis. It is in the northwest portion of Missouri and its immediate territory constitutes that rich agricultural and livestock producing section [fol. 430] which comprises portions of Missouri, Kansas, Iowa and Nebraska. Six transcontinental trunk line railroads,—The Union Pacific, Missouri Pacific, Burlington, Chicago-Great Western, Santa Fe and Rock Island, center at St. Joseph. There are in St. Joseph over 20,000 individual homes with some 25,000 families. For the most part the residences are situate on the high grounds (T. 328), to the east and north of the business section. There are 230 miles of street, of which 170 miles are paved. There are 40 public schools with 465 teachers and about 19,000 children of school age. The city is served by adequate street railway and bus lines. The public utilities of water, gas, electric current and telephone are a credit to any city of a much larger population. There are five public libraries, with over 125,000 circulating books. There are 13 fire fighting stations, each equipped with modern up-to-date auto trucks, with 147 firemen. There are two police stations with 115 patrolmen. There are over 750 acres of public parks, with municipal golf links, and several city swimming pools. It is a community which makes for good living and comfort. Its population is largely American. Its citizens are mostly home owners. Its laboring people are of the highest class and character. There is a substantial and splendidly developed residential section in easy walking

distance from the stockyards and packing house industries. The City of St. Joseph constitutes a community which, since the pioneer days of 1826, has been a service station for the demands of an increasingly large surrounding territory. It is renowned for its wholesale business and distributing warehouses. These sales annually run into many millions of dollars worth of groceries, millinery supplies, drygoods, hardware, flour-mill products, candy factories, letter-writing tablets, and for its men's furnishing goods, [fol. 431] which are sent into its trade territory, extending to the Pacific Coast and throughout each and every state west of the Mississippi river (T. 329). One of the largest, if not greater than the sum total of all of the other industries, is the allied interests of the cattle, hog, and sheep market which is afforded by the stockyards and the packing houses, whose products are shipped all over the world. These great livestock industries have been located and have developed into their enormous volume of business within the last generation, since 1896. As the center of the population of the United States has steadily crowded westward, these enlarging interests have sought the field of the production of their raw material. Even as have the great smelters grown up in the ore region; as the gins and mills have begun to be located in the cotton producing territory; for that same reason, the packing house industry has gradually drifted westward following livestock developments into this section of the United States. There was a time when Buffalo, New York, had the call for the large stockyards and the big abattoirs. The industry then drifted to Cincinnati, then to Chicago, then to St. Louis, and then into Kansas City, St. Joseph and Omaha. Four of the five largest beef, hog, and sheep killing establishments, with their enormous stockyard facilities, of this Nation, if not the world, are located on the Mississippi and Missouri rivers, one at St. Louis, and the other three on the Missouri River, at Kansas City, St. Joseph and Omaha. In this territory, in these fertile river (T. 330) valleys, is located the greatest cattle, hog and sheep raising industry of the Nation. It is the cornbelt of the United States. It has been demonstrated that corn produces the sweetest, the finest, the juciest, the highest priced, and the most sought after meat, and is the best food upon which the animals can be fed. These stockyards and the packing houses are not located

[fol. 432] at these various points for any other reason than the advantage which each location affords such an industry. The whole allied interests has been gradually for years working into this great central west on the largest sweetwater rivers of the Nation, where in all probability, these industries will now remain, and continue to grow and to expand and develop throughout all time.

The Chicago Stockyards and the packing houses are today probably the largest in the world. There they are hedged about and bound in by densely populated territory, with such a high value of land that is almost equivalent to steel and iron bands around them, which practically prohibits further expansion at that point without unreasonable expense. Then, furthermore, for economy of production, it is expedient that these meat producing industries should be located in this more central territory, in the locality where the most livestock is produced. Only from 18 to 25 head of live, fat steers on foot can be shipped in a car, from this locality of their production, into the killing market at Chicago. There (T. 331), afterwards, as beef, it must be reshipped; while from here, some 45 to 55 beeves can be expressed in a refrigerated car, and can be consigned directly into its market of consumption, anywhere in the United States, Canada, or Mexico. There is, furthermore, a decided benefit to institutions of this character and size to be located near by and adjoining a big city, and to not be situate within the city limits. There is the element of city taxes which is not imposed. Probably the most of all to be desired is the avoidance of the annoyance and bother by not being technically supervised and directed by the various political city boards and directors. Here is an industry upon which so very many elements have a bearing upon its monetary values that as we go into the matter, [fol. 433] seeking information wherever possible, we find it exceedingly interesting and fascinating. In the first place, we find that there are three enormously large institutions that are all intertwined and interlaced and so bound together and interlocked, and so exceedingly dependent each upon the other by a mutual business relationship, that the three institutions almost constitute one great big industrial proposition. There could be no very considerable sized packing plant except for the facilities of stockyards, nor could there be successful stockyards without packing houses. A service railway is also necessary with which to

serve both the stockyards (T. 332) and the packing houses. Consequently, these three component parts of a large industry, begin to take on a similar value in so far as the land they occupy. We realtors rather enjoy an opportunity to value real property when the improvement and the occupancy are in keeping with the time and the demands of its location. There is ever that element of potentiality which contributes to all real estate values, and, too often, we find that in evaluating land that its future use seems to contribute to its greatest worth. In this instance, we find the greater portion of this land already put to a practical, useful, profitable purpose and occupation. The volume of the business transacted by the various allied interests of the stockyards at St. Joseph, indicating its far reaching service, makes an interesting story, and reflects directly upon the value of the land occupied. Solely on the account of the stockyards and packing house industries there is established and located at this point a bank in the Livestock Exchange Building, which in 1926 had paid-up capital of $350,000. It had a surplus of $150,000.00 and there was over $3,500,000.00 in deposits. The transactions of this bank which is confined almost solely to the livestock industry is [fol. 434] each year nearly one-half of the total sum of the footings of the eighteen other banks which do business throughout the entire city. There is a (T. 333) United States Post Office made necessary at this point, which is separate and apart from the general Post Office of the City of St. Joseph. It is located in the Exchange Building, and is called "South St. Joseph". In 1928 it had a stamp sales receipts of approximately $45,000.00. We ascertain that during the year 1928 that there were received at the Stockyards the total number of 3,911,409 head of cattle, sheep, hogs, horses, and mules which had a value of $100,600,825.00. The value of this livestock was greatly and enormously increased as it was reshipped as beef, pork, and mutton. It is essential to the value of a property of this character as to whether it is an established, going, and prosperous business. We find that the average annual receipts for the four years of 1925, 1926, 1927 and 1928 were 51,850 cars of stock, while in the year of 1928 there were received in the stockyards livestock equivalent to 52,363 cars. There were in 1928 employed daily in the three allied interests about 3,500 men and women who labor in these institutions. The average payroll of all of these people is over

$10,000.00 each week which reaches the enormous sum of $5,231,664.10 for the year. There is a daily newspaper published at this locality which has a daily circulation of over 3,000, which serves the patrons of these three allied industries. There is located at the stockyards (T. 334) what is known as the "Stock Exchange Building." It consists of a four story brick office structure which in addition to the offices of the Stockyards Company, the bank, and the Post Office, contains more than 100 offices which are occupied on a rental basis by the livestock commission merchants. These same commission men still further use in the conduct of their business many pens and yards which [fol. 435] produce a large income to the stockyards company. As unmistakable evidence of the influence of the stockyards upon property values, we have but to look back a few years to the time when the former "Livestock Exchange Building," which was located at the foot of Missouri Avenue, which is about eight blocks north of the present Exchange Building, caught fire and burned to the ground. After this fire, the building was not rebuilt at its former location, but was removed to the foot of Illinois Avenue where it is now situate. As evidence that the adjoining land does not make the value of the stockyards properties, but as evidence that the stockyards and allied interests established the value of adjoining land, we point to the fact that when the original Exchange Building was destroyed by fire, and was at that time relocated, that the values almost immediately went completely out of Missouri Avenue property. It is today difficult to sell a lot on West Missouri Avenue at any price. There is no demand whatever for it. At Illinois Avenue where the land was not originally so inviting, it is today the highest priced retail section of that community. The removal of this one building killed one section of (T. 335) that community and immediately established another. Equally so in our opinion have the values of these three allied interests been reflected into all of the property in that locality and vicinity. The farm lands adjoining do not reflect their value into the stockyards, but, to the contrary, the value of the stockyards' land has wonderfully increased the value of the farm lands. In our opinion, it is not fair and it is not just to the properties of the allied interest to gauge and to estab-

lish the values of their lands by what unimproved adjacent real estate can be purchased. We have examined a large number of records of real estate transfers of property ad- [fol. 436] jacent and in the vicinity of the stockyards and of the packing houses. Many of the sales, we are personally acquainted with and we know of the circumstances and conditions under which they were made. Outside of the Belt Railway circle, and especially as we extend more remote, from the active associated inter-sts, almost in every instance the value per square foot, or per acre, is much less than that of the allied interests properties. There are some properties on Illinois Avenue, which on account of the intensified mercantile use and business occupancy to which they are applied, which exceeds the square foot value of the land of the stockyards interests, but these tracts are as unfair for any comparative value as these of too little worth. In almost any instance (T. 336), all through that territory, the values of adjacent land are either made or destroyed by the very nature of the occupancy by the packing house industries. We do think, however, that the transfers on Illinois Avenue more correctly reflect and indicate the value of the stockyards land than those of the outlying, dormant, inactive properties, such as Kirschner's Addition, Pettipiers Addition, and some of the waiting farm lands. We have not taken these values and literally applied them to the adjoining land, but we have considered them all together with the many other things which we took into consideration before reaching our final unit value. It is a rule, where possible, to appraise the value of land by that sum which a willing purchaser would proffer a willing seller. But such a price might not always be just and fair for the estimated value to an adjacent owner. Property could easily be adjacent and adjoining and not be similar in character and value, as for instance, take the three properties consisting of the stockyards, packing houses, and the Belt Line Railroad. These three properties in their high state [fol. 437] of development and useful active occupancy are the only properties of similar character in that section, and in valuing the land of the St. Joseph Stockyards Company we have given it the value of the only adjacent similar land, the packing house land and the railroad property. We have reference to land values alone, exclusive of the improvements thereon. Institutions of this character, to be successful, should (T. 337) be first located in the territory

of the origin of their raw product. They must, for provisions of health, cleanliness and sanitation, be on a large body of water. If on a river, they should be below the densely populated territory. For the sake of abundant labor they must be located near some city. There should be good living facilities and good homes near by. Business acumen requires that room for expansion must be considered. Many large institutions throughout the country through lack of opportunity to extend and expand have been put to the enormous expense of removing their entire plant to other localities. Railroad transportation, and in these latter days, truck service, is a vital factor and must be considered.

Greatest in value of real estate in all of the big cities is that property which is in line with the current of retail trade. It is where the greatest number of people are to be found during shopping hours. The best retail sections of St. Joseph have a selling and rental value as high as forty dollars per square foot. In the wholesale district, which is back of the retail section, but in some instances adjoining, we find that the improvements and cost of building, on account of enormous size, is very high, but the land value is greatly reduced. In the wholesale section of St. Joseph the ground can be purchased (T. 338) from $2.00 to $5.00 per square foot. Manufacturing and industrial [fol. 438] property over the city varies in value and sometimes reaches as high as fifty cents a square foot. The reason for this is that not nearly so many people frequent the wholesale district as are in the retail district. The packing house and stockyards section of St. Joseph are more in comparison with the wholesale and industrial sections as to value. Their business is conducted largely through customers who never visited the market. It is purely and solely on account of the great volume of business, and its profitable and useful occupancy by the wholesale merchants and manufacturers, and equally so by the Stockyards, and its allied industries, which breathes the greater values into the land they occupy. It is unfair and unjust to judge the value of a live, useful and working property by the value of an idle, slothful, inactive tract which happens to lie adjacent and adjoining, whose potential worth is its greatest consideration, and whose final occupancy may be of entirely different character and purpose. We

have been exhibited a lease on the land under which the St. Joseph Belt Railway Company operates. It begins January 1st, 1929, and expires December 31st, 1938. The rental is on a basis of $60,702.00 payable annually, plus the taxes and other expenses chargeable to the land. Considering the Belt (T. 339) Railway Company occupies about 75 acres, at this rental, it pays a 6% net income on a $0.30 per square foot value for about $1,000,000.00 worth of land. In giving our estimate of the value of all of the land which the stockyards occupy in the conduct of its business, a question might be asked why do we attach the same value to all of the acreage, even though a portion of it is located quite remote from the center, or from the highest developed part of the tract. Our answer would be that all of the ground, taken together, should be considered jointly, making one large industry. The land value should be consid- [fol. 439] ered as a tract. It is different from a city block, with several ownerships, where each tract is a distinct unit used for different purposes. A sound and dependable and useful workhorse is valued at one hundred and fifty dollars. Someone seeks an analysis of the value of the several parts of the animal. The question is asked, "What is the value of the hind leg?" Another seeks to know the worth of his shoulder, and so on, is the value of every portion of that horse sought. It is impossible to justly arrive at the worth of a live and useful work-horse by this process of reasoning. He is worth $150.00 as an assembled, sound and usable animal. Every part of the animal takes on the same value. Equally so is every acre of this land which is used by the St. Joseph Stockyards in the conduct of its business, while being operated together, worth the same amount of money. In considering the always intricate problem of what is the exact and actual value of any piece of real estate, there must always be considered, and ever used, a large element of "common sense" and judgment. It is not difficult to add, subtract, and multiply, and to arrive at an absolutely correct answer to a purely mathematical problem. In the appraisal of land values, there are no invariable rules, there is no positive and absolute method by which to arrive at an infallible conclusion. A fat steer is to be weighed. Two men look the animal over. One says to the other "That steer will weigh 1400 lbs." The reply is "How do you know it?" The man who made the esti-

mate gave as his reason for the amount, that it was his opinion from his experience and observation of many times having before seen other animals weighed. The steer was driven on to the scales. It weighed exactly 1400 lbs. There was no attempted analysis of what each particular portion [fol. 440] of the steer weighed. The animal was considered as a whole. In that same manner have we arrived at our conclusion of the value of this land, based on the things we have considered, plus our years of experience in the real estate business. There are many (T. 341) elements that go to make up market values, but the all persuading argument is the adaptability of a particular tract or a building for its intended use. Outside of sentiment, and of a speculation, property is only valuable because it produces an income, or returns a profit, or serves a purpose. We must next seek the term, or length of time, that such a property will probably continue in a useful condition. The rule of procedure, and undoubtedly the proper method, to value a piece of real property is to consider it for its highest and best use. We consider the land of the St. Joseph Stockyards to be so used at this time (T. 342).

To the foregoing statement of the witness, set out on pages 328 to 342, both inclusive, of the transcript, counsel for the Government objected on the ground that said statement is immaterial and irrelevant for that there is no connection or pertinency between the description of the past and future of the City of St. Joseph as set out in said statement and the valuation of respondent's land. Counsel stated that due to the putting of the witness' statement into the record as a whole, counsel was under the necessity of objecting to it as a whole but wished to point out before the oral argument their particular objection. This was agreed to by counsel for respondent upon the condition that they be given sufficient notice to enable them to prepare reply (T. 343). The objection was overruled by the Examiner and the witness continued his testimony in substance as follows:

Mr. Atkinson and I agreed upon the outlines of the zones, which zones are shown on Respondent's Exhibit No. 4, [fol. 441] and reported them to Mr. Kosters (T. 344). At our suggestion he outlined these zones on the blueprint marked for identification Respondent's Exhibit No. 3, and resubmitted it to us. He computed the square feet or the

acreage of each tract. The unit prices appearing on Respondent's Exhibit No. 3 are those which Mr. Atkinson and I gave to Mr. Kosters and they correspond with the summary marked for identification Respondent's Exhibit No. 4.

Zone A

Zone A is a tract containing 74.72 acres or 3,254,803 square feet and is the land which is in active use by Respondent in the daily operation and conduct of its business and upon which all of its yards, pens, scales, Exchange Building and all of the improvements and equipment is located. It is the most extensively improved and developed of any property of its character in that vicinity. We place the value of 30c per square foot upon the entire tract which, according to the dimensions given us, makes a total of $976,440.80 (T. 345).

Zone B

Zone B is a tract of 17.09 acres or 744,440 square feet. It is of the same character as the land occupied by Respondent's hog sheds and has equal railroad service. It joins that portion of Respondent's land which is actively used in the conduct of its business. At present zone B is occupied by a hog serum company. It is located at the south end of the hog sheds and is one of the practical and logical sites for extension of the hog division. Considering that it is not actually in use by Respondent for the immediate conduct of its business but is in waiting, we do not value [fol. 442] this tract as high as zone A. We value it at 15c per square foot which amounts to $111,666.00 for the entire zone B (T. 346). We value the property in this zone with the idea in mind that in keeping with good business, in providing for the future an institution as large as Respondent's could not afford to do otherwise than hold such a tract for future extension. It dare not bottle itself up in such a manner when upon demand it could not extend the service of its hog yards. Such a tract, therefore, has a present and a potential value, both of which elements we have taken into consideration.

Zone C

Zone C is a tract of 22.91 acres or 997,960 square feet. It lies immediately north of the present cattle pens which

is the logical and practical direction for this branch of the stockyards to extend. It has all the railroad facilities of any of the properties in that vicinity and in addition it faces the north on one of the main paved streets leading to the uptown section. While waiting to be called into use by the extention of the cattle pens the tract is used for sheep and cattle feeding yards. Considering that this tract has first call for any extension of the cattle pens, we have placed on it a value of 15c per square foot which is $149,694.00 for the entire zone. In this tract we find the location for the logical and practical extension of the cattle pens (T. 347). It stands exactly in the same relation to the cattle yards as zone B stands to the hog yards.

Zone D

Zone D is a tract of 11.60 acres or 505,296 square feet. It is exactly the same character of land as that occupied by the packing houses. It has every service of the railroad and other utilities that any other tract has in that locality. [fol. 443] It lies immediately north of and adjoining Swift & Company's plant. It is the most inviting and attractive piece for any extension of or addition to the packing house industry. Considering that it is not actually in use at this time but is held for extension purposes, we do not value this tract as the one adjoining, but place upon it a value of 20c per square foot which is $101,159.20 for the entire zone.

Zone E

Zone E is a tract of 10 acres or 435,600 square feet. It stands in exactly the same attitude and relation that tract B holds except that it is at the south end and more remote. It has all the railroad facilities and is probably the second tract in call for any extension of the packing house industry. Considering that it is not actually in use for that purpose at this time but is being held in waiting for packing house extension, we place upon it a value of 15c per square foot, which is $65,340 for the whole zone (T. 348).

Zone F

Zone F is a tract of 47.47 acres, or 2,067,793 square feet. It is a beautiful and attractive piece of land which can be used for the extension of either the stockyards or the

packing house industry. It joins those properties on the south. It has every railroad and sewer service and is a tract that any organization like Respondent could not afford not to own and control. It is of the same character as the land actually used by the stockyards and packing houses and in our judgment has an actual and reflected value of $2,500 per acre, or 6c per square foot, which is $124,067.58 for the whole zone. The same may be said of this tract [fol. 444] as was said with reference to zone B, except that there are two specific uses which the future holds in store for it. It can be absorbed by the packinghouse industry either for the extension of a present plant or as the location of an entirely new plant. It also has a possible use by respondent itself. If a new plant were to be established in St. Joseph its logical and practical location would be on this tract. The general plan and scheme of all the industries here is that of having the packing houses and the stockyards parallel each other. This is done to effect economy in service.

Zone F-1

Zone F-1 is a long strip of ground containing .87 of an acre or 37,897 square feet. It fronts about 1300 feet on Alabama Avenue. It lies across from Zone I and F and is separated from them by the Street Railway right-of-way. It has the advantage of street railway service (T. 349) and of Alabama Avenue which is paved. It is within easy access of the Union Terminal Railway with sewer facilities. It is particularly adaptable for small manufacturing or industrial plants. It is our opinion that this tract is worth 6c per square foot which is $2,273.82 for the entire zone.

Zone G

Zone G contains 22.537 acres. It lies south and west of the active stockyards and packing house properties and east of the Stewart Inso-Board Company. It is served by the Union Terminal Railway Company and has the advantage of a public road on two sides. It is a very beautiful and attractive tract which is surrounded by ground used by high-class industrial institutions. This character of land which is already to go with its paved road, sewer and switch [fol. 445] track facilities is, in our opinion, worth $1,000 per acre, or $22,537.00 for the entire tract.

Zone H

Zone H contains 10.88 acres. It lies immediately across the road to the north of Zone G and is of the same character. It enjoys the same improvements and accessibility and in our opinion is worth $1,000 per acre or $10,880.00 for the entire tract.

Zone I

Zone I contains 9.10 acres. It lies in a triangular shape immediately north of Kirschner's Addition. It fronts on the south on Alabama Street (T. 350) which is the main paved thoroughfare leading to Lake Contrary, the leading summer resort of this community. It has the advantage of a street on the south and the service of Brown's Branch ditch for drainage. In our opinion it is worth $1,000 per acre or $9,100.00 for the entire tract.

Zone J

Zone J is a tract of 24.90 acres of land. It lies west of and adjoining the paved road and has the services of Brown's Branch ditch for drainage and a switch track which, though not actually built into this zone, is of easy access. It is separated by a paved road only from the highest priced industrial property in St. Joseph. In our opinion it is worth $1,000 per acre or $24,900 for the entire tract.

Zone K

Zone K contains 15.612 acres. It is much the same character of land as zone J. It is about as accessible and in gen- [fol. 446] eral would be as usable as Zone J but owing to the fact that it is not so high nor quite so well filled and being more remote from the switch track facilities we placed on it a value of $700 an acre, or $10,241.27 for the tract.

Zone L

Zone L contains 18.04 acres. It is served by a paved road leading from uptown and is across the road west from the Grain Belt Mills. There is a swale and a strip of low ground which extends (T. 351) through one end of it. This tract faces on the Missouri River. There are

many industrial institutions that would enjoy opportunity to have land of this character. We place upon it a value of $500 per acre, or $9,020.00 for the entire tract.

Zone M

Zone M contains 12 acres and lies north and west of the property of the St. Joseph Tanning Company. It is a triangular tract with hypotenuse fronting on the river. Along this entire frontage the United States Government has done extensive protective work by revetment piling. Considering that this tract is more or less cut up and hid away we are constrained to value it lower than Zone L, although the two zones are of much the same character. We value it at $350 per acre, which is $4,200 for the tract as a whole.

Zone N

Zone N is a tract of 56.60 acres. It is one of the finest tracts in this whole vicinity for industrial purposes. To the south of it across the road is the allied interests of the stockyards. To the west are some of the largest grain elevators and most extensive flour mill properties of this city. It has fine drainage facilities. It has wonderful [fol. 447] street approach and is a location that stands out prominently and invites occupancy by various industrial institutions. We value it at $3,500 per acre, which is $198,100 for the entire tract (T. 352).

Zone 1

Zone 1 consists of lots fronting on Illinois Avenue situate east of the railroad tracks and within the city limits. These lots constitute some of the highest priced properties in the retail section of that community. Upon part of this ground is the Transit House Hotel which is a four-story building and is the hostelry patronized by the stockmen of that communiy. The tract contains .544 of an acre, or 23,697 square feet, upon which we place a value for the unimproved ground of 40c per square foot or $9,478.80 for the entire tract.

Zone 2

Zone 2 consists of the properties upon which the extensive horse and mule barns and sheds are constructed.

These are adjuncts and supplemental to the stockyards industry. The tract contains 3.19 acres, or 138,956 square feet, which we value at 15c per square foot, or $20,843.40 for the entire tract.

Zone 3

Zone 3 is a tract that has been laid out into lots with streets and alleys. Lake Avenue, which extends the full length of it, has been paved and is the main thoroughfare to Lake Contrary. It has all the general public improvements that any portion of the city enjoys. The property is usable for small residences or for industrial purposes in the assembled tract. Evidently this property has been held for expansion purposes for the horse and mule [fol. 448] market. The advent of automobiles and farm tractors, together with the ending of the War, about ended the demand for any more horses so that the purpose for which this ground (T. 353) was held does not exist any more. This tract contains 14.351 acres, or 625,130 square feet, which we value at 8c per square foot or $50,010.40 for the entire zone (T. 354). The summary of our valuation is $1,900,000.77 and is contained in Respondent's Exhibit 4.

Counsel for respondent stated that they reserve the right to correct any errors of computation which might be found in this exhibit.

We were requested to appraise respondent's land as of June 30, 1929. We appraised it as of its value at that date and not as of any other date; also we appraised it according to the conditions we found properly at that time. We appraised it on the condition as we found it and not upon any change of conditions that might ever occur (T. 355) but we always consider the permanence, that is to say, how long the land will remain in that condition for that has a great deal to do with the value of a property. We considered that the land used by respondent would continue to be so used indefinitely. We know of no reason why it should not.

I am familiar with the book written by John A. Zangerle entitled "Principles of Real Estate Appraising." I have it in my library. Mr. Zangerle is considered an authority among real estate appraisers. He has written a number of books. I thoroughly agree with the statement on page 24 of that book which reads as follows:

"Some realtors and accountants fix different values as the basis for stock and bond issues, for purchase purposes, for cost accounting or income, or general tax purposes. With these theories of a different valuation, according to [fol. 449] the color of the eye of a client, one has little sympathy. These 57 varieties of appraisal, to suit a purchaser, are not calculated to elevate the profession. Nothing more nauseates an owner than to discover different appraisals of the same real estate for different purposes by the same appraiser. By this practice, realtors, assessors, and accountants lose the confidence (T. 356) of the public and invalidate the credibility of their work."

Thereupon the Government objected to the question and moved to strike the answer in that the principles governing the determination of land values for rate making purposes are questions of law which have been determined by the Supreme Court of the United States. The objection was overruled and the motion to strike denied (T. 357) and the witness continued his testimony in substance as follows:

We looked up real property transfers in the vicinity of respondent's property. We employed a man who is competent to examine the records and he found through leases and otherwise in that vicinity some 53 transfers of which we have considered every one. They include some of the transfers that Mr. Mack testified to the other day. We know of the tracts that he testified to and we considered those (T. 358).

Thereupon counsel for respondent tendered counsel for the Government for cross examination or other purpose a list of the transfers referred to by the witness. In response to questions by counsel for the Government the witness stated that while he did not blend literally the prices of these transfers into the values he placed on respondent's land, they did consider them in reaching their opinion, which opinion was influenced to some extent by these transfers. Thereupon at request of counsel for the Government, counsel for respondent had a list of transfers marked for [fols. 450 & 451] identification as Respondent's Exhibit 5. Continuing, the witness testified in substance as follows:

The pencil notations at the bottom of the various sheets of this exhibit were inserted by me to identify the deeds and memoranda that I made on them at the time (T. 359).

Thereupon respondent introduced in evidence without objection as respondent's Exhibits 3, 4, and 5, the map and papers set forth, identified, and discussed.

RESPONDENT'S EXHIBIT No. 4

Land Values

St. Joseph Stock Yards Company

Zone	Acres	Sq. Ft.	Price Per Acre	Price Per Sq. Ft.	Value
A	74.72	3,254,803		.30	$976,440.80
B	17.09	744,440		.15	111,666.00
C	22.91	997,960		.15	149,694.00
D	11.60	505,296		.20	101,159.20
E	10.00	435,600		.15	65,340.00
F	47.47	2,067,793		.06	124,067.58
F-1	.87	37,897		.06	2,273.82
G	22.537		$1,000.00		22,537.00
H	10.88		1,000.00		10,880.00
I	9.10		1,000.00		9,100.00
J	24.90		1,000.00		24,900.00
K	15.612		700.00		10,241.27
L	18.04		500.00		9,020.00
M	12.00		350.00		4,200.00
N	56.60		3,500.00		198,100.00
1	.544	23,697		.40	9,478.80
2	3.19	138,956		.15	20,843.40
3	14.351	625,130		.08	50,010.40
Total	372.414				$1,900,000.77

[fol. 452] Cross-examination:

I am acquainted with W. L. Mack. He has an office in that part of the city known as South St. Joseph and Mr. Atkinson's office and mine are located uptown. The three of us have acted together in the appraisal of some lands but have never so acted in respect to respondent's land. I have acted with Mr. Mack on the appraisal committee of the Real Estate Board (T. 360). I have a very high regard for Mr. Mack. I do not think I would fail to take up with Mr. Mack, Mr. Smith, or some of the agents who live and operate in that section of the city any value in South St. Joseph about which I was consulted. Mr. Mack frequently consults with me about values uptown. I think he and the other real estate agents in South St. Joseph would do that with some of us who live uptown.

If the stockyards and institutions of that character were located away from the facilities of good living it would materially affect the value of institutions of that kind. I set forth at considerable extent the facilities of good living around this community and of the availability of good labor

and thought that it all had a direct bearing upon the value of an institution of that kind (T. 361). I think undoubtedly that respondent's land would be less valuable were it located in a community where the facilities for good living are poor, especially if there were no population from which labor could be drawn. Undoubtedly if the stockyards were in a city without fire protection the land would be less valuable. I consider that the superstructure and the value of [fol. 453] the land run together. We have only attempted to give you a land value but there is a superstructure valuation that goes right along with the land. I do not, of course, include the value of superstructures but I think that having superstructures upon the land increases the value of the land.

I said that I agreed with the quotation which was read from page 24 of Mr. Zangerle's book (T. 362).

I think Mr. Zangerle spoke rather facetiously when he said "57 varieties." I think the idea he intended to convey was that there was one value of real estate and not two or three. That value is according to the highest use to which a piece of property can be put. Its value for that use is not necessarily determined from the income derived from that use. For instance, a residence can be worth so much money without any income from it at all. Industrial property cannot always be governed by the income, whether or not it is a profitable business. If it be an unprofitable business and improperly managed there would be a different condition than if it were a well managed business. So we don't read into the real estate value wholly on the return on the investment; cannot do so. I don't know whether it is true that the unprofitableness of the business located on the land would be due either to bad management or to the fact that it was not the highest use to which the land could be put. A piece of property under one ownership might be worth less than the same property under another ownership. That is a matter of management and one thing and another (T. 363).

Many things read into the value. The St. Joseph stockyards has good management and a good reputation. I think the land in the stockyards is used today for its highest and best purpose. I do not think that the income from that use [fol. 454] would govern the value of that land. There are fluctuating times and conditions. It would have to go over a period. I would not want to go on one day on an institu-

tion, or one month or one year. I would not want to say whether over a long period the income derived from the highest and best use of this property under good management would determine its value for industrial purposes. I don't know about the management of it. The income derived from its highest use under good management would have a bearing, I am sure, upon its value for industrial purposes. I think it would have considerable bearing, but I would not want to say that it had the controlling interest (T. 364).

I think the permanency of the business and the service it gives to the community would have a controlling bearing. I agree with Mr. Zangerle's statement that "Nothing more nauseates an owner than to discover different appraisals of the same real estate for different purposes by the same appraiser." But I don't say that it would nauseate the owners of the stockyards property if they should find that the Government had valued their property at one price for rate making purposes and that the tax assessor had valued it at another for tax purposes. It would not be nauseating to me to be associated with any other gentlemen and have them differ in their opinions from my opinion (T. 365).

I think that an appraiser ought to have an appraisal value on a piece of property taking everything into consideration and that he ought not to imagine then some other condition exists and have another value. I know the character of men who make tax assessments. I have been called on a great many times by men who are elected (T. 366) to office to make certain tax assessments. I know of the incompetency and irregularity of tax valuations all over our country and that they are not to be relied upon as real value. Such assessors are not elected because of their qualifications as appraisers.

[fol. 455] I am chairman of the Appraisal Committee of the Real Estate Board. I think there are five members of that committee. All five members do not join in the making of an appraisal. We have three men that act together and I, as chairman of the committee, have indicated these men. Recently there was a bond issue in the city of St. Joseph that contemplated something over $2,000,000. Appraisals were to be made on several sites on which schools were to be built. We departed from the usual custom of five men and appointed several committees that they might act at

once and make a report. I think at one time we had three committees of three men each (T. 367). They reported back to the whole committee, which reports in turn to the director and the director and the president make the report of the committee to the parties requesting the appraisal. I have never known it to occur where the whole committee would revise the appraisal made by the committee of three. The director has the power to do it, but I have never known of a change being made (T. 368).

I agree with the statement in Mr. Zangerle's book that forced sales and those which are merely transfers within a family have little significance in fixing market value. I gave such weight as I thought had a bearing to those transfers listed in Respondent's Exhibit No. 5 upon which I made the notation that they were to a holding company, or from a company to its trustee, or other similar notation. It is hard to say exactly what weight such transfers have where they are for purposes of bookkeeping and adjusting accounts from one trustee to another, they cannot have a great deal of weight in relation to actual values. I think I tried to consider all these transfers. When an individual transfers a property to a company which he has organized I would give weight to the transfer if I knew the circumstances under [fol. 456] which it was made (T. 369). That is, if the property had cost him a certain amount or if he had received a certain amount for it that would have a bearing on the valuo of the property, but if it were merely a bookkeeping transaction, it would be entirely different. In case of two corporations owned by the same individual and conveying to one another, I would give weight to such a transfer if there were an actual cash consideration and I would try to ascertain whether it was an actual sale or just a bookkeeping transaction (T. 370). If the same group of individuals owned two corporations and caused a transfer of real property from one to the other I would consider such a transfer in fixing real property values if the grantee corporation had a practical use for the property, but I would not give the same weight to that kind of a transfer as to one made at arm's length. I would want to investigate the details of it. On the face of it, it would look like it needed investigation. If the corporation had a practical purpose to which to put the land and it was going on to another institution I would think it would be bona fide and a just thing to consider. Being

specific, the Belt Railway Company rents from the (T. 371) stockyards company some million dollars worth of land. They base their rental on a 30c a square foot value on the ground which basis is upon the same value that Mr. Atkinson and I placed upon that ground before this lease was made. I don't know whether you have that in mind or not, but I think specifically it answers your question and is directly in line. I would think when they take a lease of that kind on a piece of property that has been valued by disinterested parties that would be a fair thing to consider.

I think the Belt Railway is interlaced and intertwined with the same people who own the stockyards, the directors being the same and some of the owners. I don't know that [fol. 457] they are entirely so. Assuming that they are entirely the same I repeat that I believe a lease of this character made upon a basis of valuation made prior to that lease by disinterested parties ought to have a bearing on the actual value. I mean by valuation made previous to the lease that Mr. Atkinson and I two years ago valued that property and stated that we thought it was worth 30c a square foot (T. 372). The property we valued was that occupied by the packing houses, the Belt Railway and the stockyards. We were valuing the Belt Railway property at that time in connection with a proceeding before the Interstate Commerce Commission. We placed on all three of those properties 30c a square foot. It was not necessary for us to value the stockyards at that time and we did not do so, but they were the same character of property and we stated in our appraisal that they were of the same value. We were valuing the Belt Railway and used 30c as a basis. We arrived at that value by a long process. It was much the same character of development as we have here (T. 373). The Belt Railway Company lease was made this year (1929) based upon a valuation made by Mr. Atkinson and me two years ago. To explain how I arrived at the 30c per square foot value of the Belt Railway property it would be necessary for me to re-read the long statement near the beginning of my testimony for I took all that into consideration. I tried to put into that statement everything that I took into consideration, using my common sense, judgment, and all the facts that I could assemble and I tried to write it down so that I would not forget anything (T. 374). In this

proceeding I brought my testimony in the Belt Railway Company proceeding before the Interstate Commerce Commission, Docket No. 785, up to date and changed it where I thought it ought to be changed. I tried to use the best [fol. 458] judgment that I had in gathering all the facts pertaining to it, I used the same process of reasoning. In valuing the Belt Railway property I used all three institutions together. I believe they are interlaced and intertwined, that they are dependent upon each other and that they bear the same value. The same assumption would establish the value of each one of them. In valuing the Belt Railway property I considered the same value of the stockyards property and also the Belt Railway and packing house properties. I read in detail in the beginning of my testimony how I arrived at my estimate and value of the stockyards property (T. 375). I did not specifically, absolutely and by itself, use the net income of the stockyards company in arriving at my valuation of the stockyards property. I don't remember that I mentioned that at all in my testimony before the Interstate Commerce Commission. My recollection is that I did not mention it. I don't think I even knew the value of it. In case two public utilities lay side by side, are owned by the same people, are both under Government regulation and it is to the interest of both to have a high value on their lands the question whether it is a proper method to value the land of one utility by a lease it makes to the other could be answered either "yes" or "no" (376). If it were an entirely different character of utility it would have an entirely different value of land, but if it were a kindred value of land I would know of no reason why my Government should prevent two corporations of that kind dealing with each other. As to whether the stockyards and the Belt Railway are the same kind of utility, they furnish service to the same people and as to using a lease made by one of them to the other as a basis of value I should think they would have a perfect right to have a deal with each other. They can name any rental in the lease which they [fol. 459] desire and the Government can name any rate that it wants finally, regardless of what they might have in it. As to whether the stockyards and Belt Railway Company could double the $60,000 rental if they chose, I would say that if fraud enters into a proposition of that kind it is

evidently an entirely different proposition than an ordinary business transaction (T. 377).

I did not state that zones A and B are all of the same basic character as to value. They are much the same but zone B is not used for stockyards purposes. I described it as being in waiting at a lesser value. As to whether if both zones A and B were entirely vacated they would be of the same value, I did not view them as vacant, entirely vacant and unoccupied. I viewed them in a high state of development (T. 380). As to whether assuming that they were all vacant I would look upon them as being of the same value, I do not know how to assume a thought that is an impossibility. It is highly improbable that those lands will be vacated. I would not attempt to make a valuation on an assumption that they were all vacant and as a realtor I decline to consider the question based on a proposition so improbable as that. I valued all the land in zone A at the same square foot value and the vacant spot of land in that tract just west of the hog division and east of Packers Avenue in such a small portion that I could not value it separately unless I made an [fol. 460] entirely new zone and it was so small that we did not take two bites of a pea (T. 381). I did not state that it was impossible to appraise vacant lands. I said that it is possible for me to attempt to value vacant land anywhere.

I can value a piece of property that is going to be razed. When a building is torn down and another improvement is made there may be an entirely different value that would be called a potential value. If it is presented to me that the building is going to be razed I value the land on that assumption. As to whether I could arrive at the value of the stockyards land on the assumption that the structures were going to be razed (T. 382) I would not be presented with a hypothetical case of that character, where you would wipe all of the value out. As I have said several times I valued this stockyard property as we found it. I did not value it upon any hypothetical question that the sub-structures and improvements should be wiped out. I valued it for the purpose of its highest and best use. To assume anything different from that is an entirely different matter. The assumption that the structures have been razed is so improbable that it converts itself into the proposition heretofore mentioned of making two values on one property at the same time by the same realtor (T. 383).

My position is that I did not feel that I could value the stockyards land on the theory that the stockyards is just wiped off.

My difference of 15c per square foot in the valuation of tract B is because it has not been brought into its highest and best use. When it has been brought into that use I think it will be worth just as much as the land in tract A (T. 384). If respondent were expanding the hog pens over on to zone B, I would think so much of that tract as the pens cover would immediately become worth 30c a foot. I would have to make another survey to determine the effect upon [fol. 461] the value which would be brought about by the subsequent destruction of those pens. I cannot imagine what conditions would then arise. As to whether the conditions would be different from what they now are, hog pens might be removed from the other end and put down there. As to whether so doing would change the land, Mr. Atkinson and I deliberated a long time over the value of the ground as we found it, hoping to give a fair estimate according to our best judgment as to what it was worth (T. 385). We did not give an estimate of this for Respondent because the Respondent was paying our appraisal fee. It would not have made any difference had we valued it for the Government or anybody else, we would have arrived at the same conclusion. We think that piece of ground, vacant and unused, being held in waiting, is the only logical expansion for the stockyards and for the Hammond Packing Company, which is now Armour & Company, and is worth 15c per square foot.

[fol. 462] I have not been through all those blocks of pens at the north end of my zone A which are marked Cattle Pens. I do not think that they are now used for the purposes for which they were originally constructed. It is the old cattle division, or part of it. I would not say that the pens are tumbling down now. I went through them at the foot of Missouri Avenue. At one time the Exchange Building stood there. In those days the cattle pens were the nearest to the Exchange Building and in that section was the greatest development. When they moved the Exchange Building eight blocks south of there those pens were left more remote and probably less used than those north of the Exchange Building.

I don't remember just exactly what use is being made of the area just east of the cattle pens marked "Five acres

tillable." I don't know whether or not it is leased out (T. 388). We walked over that ground but I don't remember the use to which it was being put. I did not seek to ascertain the rental of that land as a guide to my valuation of that land but where ground is in waiting a nominal rental has nothing to do with the value of the ground as it is just a carrying charge. In all probability the rental of such land for feed lots would not indicate value of the land in the pen area.

If cattle pens were built over my zone C I would want to re-survey it again on values before saying whether I would regard it as worth 30c a foot. I would want to re-survey it and re-value it after improvements were made before stating a value. My idea of the value of it would depend upon the use to which it was put and I would want to see that use before I would change my value from what it is at the present (T. 389).

Prior to my valuation of the Belt Railway Company it [fol. 463] was under lease at something like half of what it is now, but it had been under lease then for some ten years, subject to revision, and we are told that in 1918, the year the revision should have been, the war was on and the Government had charge of all the railroads and the Government could not make the revision that was expected there. The lease to which I refer is the transaction shown on page 48 of Respondent's Exhibit 5, which lease is dated August 1, 1916, and is from the St. Joseph Stockyards Company to the St. Joseph Belt Railroad. The date of expiration was July 31, 1938, and the rental $26,500 per year. I have marked on it "Old Lease of Belt right of way canceled by No. 49" (T. 390). The new lease referred to at No. 49 appears on page 49 of Respondent's Exhibit 5, the rental being $60,732 per year. This lease was presented to us for our inspection. When we valued the Belt Railroad property the lease shown on page 48 was in effect. We considered that rental in arriving at the value of the Belt Railroad property as it had its bearing and we also considered the conditions under which that rental had been continued by reason of the war. As to whether we regarded it as too small a rental for the property it was at a percentage basis of the return less than we valued the property. We did not capitalize that rental in order to arrive at the value of the Belt Railway property (T. 391).

I knew nothing about the new lease and I am sure Mr. Atkinson did not until it developed in our investigation of the value of Respondent's land. We then found that it was based on our valuation. The old lease carried a provision for a revision of payment of rental. I don't just recall the exact amount. It had been suspended on account of the war conditions and had not been carried out literally. With reference to my previous statement that "There could be no very considerable sized packing plant except for the [fol. 464] facilities of stockyards, nor could there be successful stockyards without packing houses" I meant that the public stockyards are necessary to the maintenance of any considerable size packing house. In a general way, but not intimately, I am acquainted with the Fowler Packing Company at Kansas City (T. 392). There is one of the largest public stockyards in America at that city. I do not know how much of its livestock the Fowler Packing Company purchases on that stockyard. I do not know whether it purchases all of its livestock there but it wouldn't be far remote. I do not know whether it purchases any of its livestock there. We have an institution in St. Joseph, the Seitz Packing Company, a small concern which buys all of its livestock on Respondent's stockyards and trucks it over to the Seitz Abattoir. I am not acquainted with the Cudahy Packing plant across the river from St. Paul, Minn., nor the Hormel Packing Company at Austin, Minn. (T. 393). I am not acquainted with the Northern Cooperative Packing Company at Grand Forks, N. D. I do not know the Omaha Packing Company at Chicago by that name. I assume that there are exceptions to all rules. I assume there may be cases like the Seitz Packing Company in St. Joseph that may be on the outer edge of the big institutions. I have been to the Rath Packing house at Waterloo, Iowa (T. 394). There are facilities for handling livestock at Waterloo but I do not know whether there is any public stockyards there but there are stockyards facilities, railroad facilities, by which stock is handled at the Rath Packing house.

Which of two adjoining lots, one having a one story store building and the other a three story building with stores and office on it would be the more intensively used would depend entirely upon the business which occupied them. Banks are very intensive improvements and nearly all of [fol. 465] them are one story. Possibly next door to the

bank may be a ten story department store. It entirely depends upon the occupancy and the purpose for which it was erected and used. A two story bank may be just as intensively used for the purpose for which it was constructed as a ten story department store (T. 395). To determine the question of intensiveness of use I would have to survey each piece of property and go into the neighborhood and ascertain conditions generally as I did relative to Respondent's property. There are no arbitrary rules to be laid down that are invariable as to the value of the property. One of the best rules when a piece of property is at its highest and best use is its rental return. That is the finality of the value of a piece of property. When asked if its rental return would be based largely upon the income that could be made on it witness stated it ought to be eventuated into that condition (T. 396). I do not think the packing house land at South St. Joseph is put to a more intensive use than the stockyards land. They are both at their capacity when they are both serving the highest purpose. The income per square foot on the packing house land may involve greater money but I do not know about net income as it may also involve greater cost of operation.

While I regard a general survey of the City of St. Joseph as of value in making the appraisal of Respondent's land, I didn't attempt in any direct way to reflect in my values the element of the number of school teachers and pupils and things of that kind, except in so far as the facilities for health and good living for the 3,500 employees in the stockyards add value. As to whether in arriving at my value of Respondent's land, I calculated on the basis of an annual rental of $60,702 for the Belt Railroad property and capitalized that at 6% and obtained the value of about a million [fol. 466] dollars with the result of 30c per square foot, I will say that my value of that property was made prior to the lease and I think they took my value more than I took theirs but the figures used in my testimony are not meaningless in that respect (T. 397).

Redirect examination:

When asked if the stockyards company had based the rental in the Belt lease on Mr. Mack's appraisal would the result have been much different, witness stated that a hasty recapitulation of the two appraisals shows that adding

Mr. Mack's zones together and dividing by five makes about 30c. Thereupon the witness was excused (T. 398).

Recross-examination:

In Interstate Commerce Commission Valuation Docket No. 785, I testified (T. 417) that:

"We have been exhibited a lease on the land under which the Belt Railway Company operates. It was originally for 30 years from 1908 and expired in 1938. This is an old lease. It provides for a readjustment of payment in 1918. We are informed that on account of the Federal Government at that date being in charge of all railroads of the Nation, that there was consequently no change made in the payments at the termination of that ten-year period, and that now, there can be no further change in rental of 1928. At the present rate of lease, this rental is on a basis of $26,500 annually, plus the taxes, chargeable to the land, considering that there are 78 acres in the (T. 412) whole tract. This nets about 3% annually on the land value of $900,000.

'Q. Why did you use 3%?

A. For the reason that in the investment of many large estates, it is to be considered fortunate indeed if the whole of the estate for all of the time would net a 3% income. This was equally true in St. Joseph in 1908, as it is today' " (T. 413).

[fol. 467] As to whether I regard the 3% as a fortunate income now on large estates, I know of a number of estates that I would be mighty happy to handle at 3%, and I know of a number that get more. I make investments. In the last couple or three years, the rate of interest has been much higher than it was seven, eight, or ten years ago. You cannot borrow call money at the bank nowadays at less than 8% interest. We are loaning money on real estate security at 7%, small loans (T. 417). That is 7% net to the investor.

It was in May, 1926, that I testified before the Interstate Commerce Commission in Valuation Docket No. 785, as above quoted.

FRANK M. ATKINSON, being first duly sworn, testified in substance as follows:

I reside in St. Joseph, where I have been a real estate operator for 43 years within 100 feet of my present location. I was once a member of the school board for two terms, was the first president of the Real Estate Exchange in St. Joseph, and have served the city as postmaster under the administration of Presidents Harrison, Cleveland, McKinley and Roosevelt.

My business is strictly real estate business at this time although I have placed a million dollars on real estate without loss to a single client. I have owned for a great number of years pieces of real estate in all parts of the city, buying and selling and scalping the market for quick returns. I have built and sold 75 homes in different loca- [fol. 468] tions, all within the city limits of St. Joseph (T. 399). As an agent I have sold more than 3500 pieces of real property in the city of St. Joseph. With J. W. Brocket and Charles Betts I purchased the holdings of the St. Joseph Terminal Company. For a great many years I have been the favored agent of the St. Joseph Light, Heat & Power Co. In recent years with William E. Spratt I have served the city in condemnation proceedings when the city hall was purchased and the park and boulevard system was acquired, involving more than a million dollars. The jury awards in the confiscation proceedings allowed within $20,000 of our valuation awards after a hard contest. Mr. Spratt and I represented the city in the contest over the purchase and condemnation of this property. With William E. Spratt I valued the land owned by the St. Joseph Gas Works and also for the St. Joseph Water Company (T. 400). With William E. Spratt I valued the six trunk lines and the Union Terminal holdings in St. Joseph. For 25 years I have kept up with all sales placed on record in this county as published in the St. Joseph Courier. It has been my custom for a great number of years when the least bit confused to set down locations and from once to twice each week look over such properties that I might keep well posted. I have advertised my sales in the public papers and have made semi-annual statements of sales which once equalled $330,000 and verified the statement by publishing names of grantors and grantees and the loca-

tion of the property sold. For 25 years I have specialized in advertising to give, for modest fees, expert opinions and advice on the value of strictly St. Joseph real property that would pass current with merchants, bankers, and other individuals. In that high endeavor in the little world in which I live I stand alone in such advertising. I feel I have been measurably successful now and for a long time [fol. 469] past in that, my principal business. Making appraisals from time to time and furnishing expert opinions has been my principal business (T. 401). I have specialized in it and no other agent ever has, with the possible exception of William E. Spratt & Co. I have at times consulted with William E. Spratt. While I have kept steadily in view the rule that I would be on safe ground in placing values on this land that would mean that the owner would not have to sell and also that the purchaser would not have to buy, I personally have felt that the value of real property depends largely on what is in the mind of the prospective purchaser when he purchases the property. There is, and can be, no invariable formula in the appraisal of real property. As an illustration, since this case started I read in the Scriptures the following: "The time has come and the day draweth near; let not the buyer rejoice nor the seller mourn." This to my mind is preferable to the old song that we all stand on "A willing seller and a willing buyer," that has been worn out. I have been an appraiser in the settlement of many large estates (T. 402) such as the Francis estate, the Donovan estate, the James McCord estate, the Hax estate, and others and was one of three employed to appraise the Irving Weihl estate (T. 403). Together with William E. Spratt within the last sixty days I have appraised something more than 200 feet of vacant ground bought for future expansion purposes by the St. Joseph Tablet Company. This brought us to the inescapable conclusion that property held for such purposes has to our mind a value far in excess of like property which is not held in expectancy.

Together with Mr. Spratt I appraised the land owned by the St. Joseph Stockyards Company as of June 30, 1929. I have heard Mr. Spratt's testimony and have ex- [fol. 470] amined and am familiar with Respondent's Exhibit No. 4. I agree with the values set forth on this exhibit. They were determined by Mr. Spratt and me

(T. 404). I agree with what Mr. Spratt has said in respect to the appraisal. In addition I would like to add that in the light of my experience I feel and have felt that this south end and the stockyards are an integral part of St. Joseph and in the law of supply and demand I have only given stabilized values as so many pounds of sugar and coffee for one dollar. I feel that either by expansion or by other industries all of the real estate holdings of the St. Joseph stockyards will be absorbed for industrial purposes during the life of many now middleaged men. I am depending on drawing on my reserve of 43 years' experience as a real estate operator in this community and standing on my motto of giving every man a square deal in every transaction of the 3500 sales that I have made as before stated.

I have in no sense been the partner of William E. Spratt. Each conducts a competitive business along the lines best suited to him. Serving with Mr. Spratt in this appraisal I think it quite unnecessary to repeat that heavy hitting real estate outfielders' statistical information. I concur with him and jointly we are responsible for the values placed on the stockyards holdings in zones and finally totalling (T. 405) a sum equal to $1,900,363.90. I am one of those who believes that the accessibility, desirability, and adaptability of this land and surroundings of the present stockyards holdings, all summed up and totalled, peculiarly and particularly appealed to the elder Swift as a 100 per cent location, not to be found here or elsewhere. In my opinion this almost alone prompted the Swift interests to plant packing houses on the rock of ages in St. Joseph, despite the fact of the city being wedged in between the fast growing cities of Kansas City and Omaha. [fol. 471] However ideally located or perfect the setting may be, after assembling this land and the cost of filling the land, putting in water mains, electric lights, and sewage system and other tremendous expenditures have much to do with my opinion as to the values of this land for the specific purpose for which it is being applied, I think, forever. It is well to remember in considering surrounding values, that if I had considered reflected values on Illinois Avenue alone, or too seriously, I would have placed higher values on this land. I fully realized that the stockyards

made Illinois Avenue and that Illinois Avenue did not make the stockyards. Brought up to the highest and most expensive development for which this land has been applied gives it in my opinion values fully equal to those placed on it by the appraisers for the St. Joseph Stockyards Company. These great going concerns, assembled and made suitable for the conduct of a stockyards business, have prompted me (T. 406) to wholeheartedly and enthusiastically adopt the theory of Wm. E. Spratt in his illustration that refers to the sound, dependable work horse. In summing up, with my conscience as my guide and depending on my general knowledge, and considering the importance, value, and magnitude of these great going concerns, and realizing that no exact formula can be laid down in the matter of real estate values, I feel that for the specific purpose of the stockyards' upbuilding and further development and expansion, no greater setting on the face of the earth will or can be found in St. Joseph or elsewhere comparable to the land on which these plants are located. Therefore, for the reasons just set forth I feel unbending in the view I take as to the values agreed upon with Mr. Spratt and which developed from sharp differences of opinion, ironed out finally to a good understanding. I find [fol. 472] that Illinois Avenue leading to the packing houses, a main retail street with splendid business concerns, is a congested thoroughfare that supplies all classes of merchandise to a community of 15,000 people, habituated to do their trading on this street. It is such a live thoroughfare that I have had to park my car several blocks distant from the Exchange Building, this bee-hive building of office help. The magnitude and staggering volume of business done at the stockyards, the great water tower or reservoir standing as the watch dog on St. Joseph's Mount Pelee on the east (T. 407), should be and is an persuasive appeal to other industries seeking locations where fire and unusually strong police protection has been provided for their coming. These packing houses and allied industries, located as they are on the west side of 15,000 people in happy, paid for, or soon paid for, homes and fine schools in my opinion has builded in perpetuity, and that of itself was and is a strong factor in the opinion of values that I have submitted here.

Cross-examination:

I know W. L. Mack of South St. Joseph. I respect his opinion and have not hesitated to consult him. The respect is mutual and he consults me. As regards Zones A and B in Respondent's Exhibit 3 as the best land in or about St. Joseph for a stockyards (T. 408), in my opinion it is probably the only location. The stockyards would simply furnish service to the packing houses. I mean the whole land is the only desirable location upon which to erect a stockyards as the Swift interests would if we did not have one. In agreeing to a value of 30c per foot on Zone A, I had in mind the highest state of development to which that tract can be put and that I considered to be for stockyards. We were asked the value of the stockyard company's holdings as of June 30, 1929. Then as now [fol. 473] was located on this land a great active going concern, the St. Joseph Stockyards Company doing service for the packing plants. Assuming that the stockyards company should, out of a clear sky announce that they would shut down for keeps, such an appalling calamity, with our present mortality, in our wholesale houses, we would throw up our hands and say that the old home town was on its death

Question: "I gather from that that you would consider that under such circumstances property values would not be nearly as high as they are now."

Answer: "I would have to think that that is so in the realms of, I might say, the hypothetical. I just cannot think of it from any standpoint of that sort."

In my opinion it would be a catastrophe, appalling and terrible.

As to intensity of use as an element in land value we stand on the broad proposition of valuing land based upon its use for its highest, best, and most useful purpose. Whether a lot in the middle of a block in the business district of downtown St. Joseph, having on it a ten-story department store, would be more or less valuable than an [fols. 474-496] adjoining vacant lot of the same size used as a parking place for hire, would be a matter in expectancy. That is to say, the store might be rented at a very high price or rental value and the other might be absorbed in the law of supply and demand within 24 hours for the

same or as high a purpose. (T. 411). I am sure I would regard the vacant land as being of a higher value than just what it could make as a parking space. I might say that sometimes as parking stations lots net the owner more than when used for three-story buildings and ten-story buildings.

I worked with Mr. Spratt in valuing the land leased to the Belt Railroad Company for use in Interstate Commerce Commission Docket No. 785 (T. 412), but did not testify before the commission in that case. (T. 414).

As to whether it would be fortunate if a large estate could be invested at a 3% net income I would have to think it over. If Mr. Spratt made that statement it would have a great impression on me to study about it (T. 415) but I would not care to pass on it without further thought. Things of that sort are pretty serious. I do not handle investments for estates. I have dodged that all my life and declined to serve as administrator in the handling of estates or to do any rental business. In the old days we used to lend a great deal of money but in the latter days we do not.

[fols. 497-509] Used and Useful Property

J. O. Barkley, a witness called by respondent, being first duly sworn, testified in substance as follows:

I reside in St. Joseph, Mo., and am vice president and general manager of the St. Joseph Stockyards Company and have been for the past 16 years. I have actual control over all the operations of the company. I am the man the directors have designated to be in active charge. In the years I have held that position I have become familiar with all the activities of that company. Outside of our own specific operations, I have visited all the other important yards from time to time and made observations there. (T. 496). A number of these yards are our active competitors and I thought it was my business to keep in pretty close touch with them.

I have read Government Exhibit 5C which was prepared by Mr. Christensen. I did not hear his testimony. (T. 497). I have noticed in Government Exhibit 5C that Mr. Christensen classifies the facilities of a stockyard company into general and outside facilities.

[fol. 510] Zone 1, Transit House

In order to consider the necessity of a hotel, such as the Transit House at South St. Joseph, we must take into consideration the history of the hotel. At the time these yards were established, it was found that hotel facilities were most essential to accommodate patrons of these yards, and, being unable to induce outside capital to invest in the facility, the yards company constructed and operated the hotel known as the "Transit House" until recent years, [fol. 511] since when it has been leased to private individuals at a nominal rental. The class of patrons served by this hotel is a farming element that will pay only nominal prices for hotel accommodations. Our location, being three miles south of the city of St. Joseph, makes it most inconvenient for patrons coming here during the night to take advantage of the prices of hotel accommodations afforded by the city, and we feel that it is a duty for the yards company to (T. 523) provide this facility at South St. Joseph, inasmuch as we could not induce private capital to do so. Furthermore, the stockyards company, of necessity, should have some sort of control over the operators of the hotel to insure the proper conduct of the hotel in keeping with the character of the other business conducted by the stockyards company. The class of people patronizing the hotel is practically the same as in former years, except that they are coming in trucks now, instead of by trains. The majority of the patrons, I am informed, arrive at the hotel between 12 o'clock midnight and three o'clock in the morning. (T. 524). The hotel people inform me that 90 per cent come in between those hours. The hotel keeps open all night to accommodate these people. A truck man can leave his truck in the stockyards, and walk across the railroad tracks and go to bed, if he wants to. That is the practice at this time. In reference to whether it is necessary for the stockyards company to own this hotel, I will state that I have tried to make myself believe it wasn't, to get rid of it, but, when we discussed the disadvantages we would be placed under if we did not afford this facility, we have felt that we had to continue it until such time at least as other hotels come in and take care of the situation. We are very unfortunate, and I don't know that we are more so than at other stockyards, as to the class of eating houses [fols. 512-548] and rooming houses that (T. 525) congre-

gate around a livestock market. Most of them try to make their revenue by means that we could not endorse. In other words, I would say they were very disreputable, and we feel it is necessary to afford a facility that people can go to, a respectable, first-class place of that character, and be taken care of.

[fol. 549] Transit House

With reference to the Transit House, I stated in part that the hotel was built back at a time when there was need for a hotel down there near the stockyards, that it was used by people who came to market with the livestock, and that in recent years the use of it has changed to the extent that most of its patrons now come from those people who drive truck loads of livestock into the yards, and those truckers are both owners and non-owners of the livestock they haul. I rather think the commercial trucker predominates. I believe that more and more it is becoming a commercial trucking proposition but I understand that a great deal of our territory is tributary to two or three other markets, (T. 891) and either the owner of the trucked-in livestock or the commercial trucker would naturally go to a place where he gets some accommodations. Without the necessary facilities at many of these competitive points they would naturally lose a great deal of business to the point that is more attractive. Our strongest competition in the truck business is Omaha and Nebraska City. The stockyards at the latter is not public but a private one owned by Wilson & Company who operate a packing plant there. I do not know whether they have a hotel there. There are hotels right in the same vicinity as the Kansas City stockyards. There are no hotels at South St. Joseph except the Transit House (T. 892). I do not know of any stockyards except Chicago, St. Joseph, East St. Louis, and Pittsburgh which maintain hotels. I am not very familiar with the hotel arrangements at those points other than St. Joseph. When the Transit House was built nearly thirty years ago there were no automobiles used. Facilities for getting uptown were very crude, almost impossible at times, on account of lack of properly paved [fol. 550] streets. Respondent leases the Transit House for $100 a month. The patronage there is not of sufficient volume and class to stand a higher rental. If the Transit House were not there I think it would be good business

for respondent either to build a hotel like it or induce someone else to do so (T. 893). I think it is necessary to have a facility of that kind there that can be operated along respectable lines. There is no other hotel there. You will note a good many signs "hotel" but they could not be classed as hotels when you look into them. They are brothels or right on the border of it. I do not think the truck drivers would want to go to places of that kind. A good many of them have been robbed who have tried it, so the report is. The objection to these truck drivers driving their trucks on up into St. Joseph and patronizing the hotels there is that the bulk of them get in here during the night, after midnight, and to get a place to park uptown would be a problem with a stranger. They would have to find a place, the class of hotel that they would like to patronize on account of the prices. I do not know of any of those cheap hotels uptown that are night and day hotels. The Transit House charges for room without bath about 75c to $1.00 and for room with bath I think it is $1.50, but I am not quite sure of that. These truck drivers do not patronize the dining room there to any great extent. I understand they take a good many breakfasts there but I am never around there in the mornings and I am not very well posted on that patronage (T. 894). If the Transit House should burn to such an extent that it could not be repaired I do not think there would be any question but that it would be rebuilt. A great many of these truck drivers make two trips a day to the market. Those which come early would probably go after a second load and come back to go to bed. For its class of patronage I regard the Transit House as [fols. 551-555] a first class hotel. It is way above the average of a country hotel in appointment and service. It is an absolutely clean and respectable hotel. I think ordinarily the rooms are pretty well used (T. 895). There are sixty rooms in the Transit House.

[fol. 556] Going Concern Value

L. R. Howson, a witness called by the Respondent, after being duly sworn, testified in substance as follows:

I live in Chicago, Illinois, and am a consulting engineer. I am a member of the firm of Alvord, Burdick and Howson.

I graduated from the University of Wisconsin in Civil Engineering in 1908, receiving the Bachelor's Degree in Civil Engineering, and four years later, for work done subsequent to graduation, I was given the professional degree of Civil Engineer (T. 539). I am a member of the American Society of Civil Engineers, a member of the American Society of Mechanical Engineering, the Western Society of Engineers, American Waterworks Society, and Illinois Society of Engineers, and others of smaller importance. Since 1908, when I was graduated from Wisconsin, I have been continuously in engineering practice. Prior to graduation, and for a short time thereafter, I had been in the employ of the Burlington Railroad. In the late summer of 1908, I entered the employ of the firm then known as Alvord and [fol. 557] Burdick, who specialized in utility and municipal engineering, and the work in which I have been continuously engaged since that time consists of all classes of municipal and utility engineering, beginning with the preliminary surveys, carrying through the designing supervision of construction, supervision of operations, and the appraisal of utility properties, specializing particularly in water supply. The work, however, includes flood relief, sewerage and sewerage disposal, and all types of utility, and hydraulic, and sanitary engineering work. I personally have appraised a great many utilities throughout the country (T. 540). I have testified on these appraisals before many of the Public Utility Commissions of various states, including Indiana, Illinois, Wisconsin, West Virginia, and Missouri and in a number of Federal Court cases and in some state courts on questions of value and rates. I have given a great deal of attention to the computation of the item known as "going value." As a result of my connection with Mr. Alvord, the senior member of our firm,—Mr. Alvord was one of the early utility appraisers,—and immediately after the Kansas City case in which the Court outlined the principle of going value, Mr. Alvord, with other engineers, attempted to work out some methods by which the Court's conception of going value could be measured. As a development of that there was first worked out in the Dubuque, Iowa, case—I believe in 1898,—there was developed in those preliminary stages what has since been called the comparative method of the "Alvord Method of Computing Value." I personally have computed going value and presented it

in well over fifty utilities, embracing waterworks, electric plants (T. 541); I believe four stockyards cases; the Detroit, Buffalo, St. Paul and this present case at St. Joe, and I also made the computation some three years ago for [fol. 558] the Denver yards, but never presented it. I have also made it for a number of railroads, and have presented it before the Interstate Commerce Commission in their behalf; I believe about five different cases before the I. C. C. I computed going value in a case which reached the Supreme Court. I put in all the evidence in the company's behalf in the Bluefield Waterworks and Improvement case, both as to physical values and to going value. In that case the Commission and the State Court allowed a specific item for going value of approximately ten per cent of the plant value. That case was appealed to the Supreme Court on the basis of reproduction value figures, and was remanded back by the Supreme Court on account of insufficient basis for rates, and was again valued by the West Virginia Commission with an increase in total value, I think, of 51%, and the inclusion again of 10% going value (T. 542). I believe it is just as practicable to compute going value, which in a reproduction estimate is the cost of reproducing the business, as it is to compute the cost of reproducing physical property having the same background of experience and knowledge of the factors affecting the business and its reproduction as must necessarily be available in computing the cost of reproducing physical property.

I have been asked by the St. Joseph Stockyards Company to compute the going value of that company as of June 30, 1930, and have made such a computation. It is contained in an exhibit which is marked for identification Respondent's Exhibit No. 8. I was asked to compute this going value some two months ago (T. 543). I made certain investigations which consisted of visiting St. Joseph to renew a familiarity, which I had acquired with the plant in connection with going value computations made two or three years prior for the St. Joseph Belt and the Union Terminal and to bring that data up to date and secure the more recent [fol. 559] facts relative to the business of the company and the features influencing it. Respondent's Exhibit No. 8, which is the result of that investigation, consists of 40 pages of which the first half is a general description of going value and the principles underlying the computation.

Q. Now, will you, Mr. Howson, take your Exhibit and briefly sketch through it and indicate the various things that have particular importance in the Exhibit, page by page, more or less indexing the Exhibit (T. 544)?

Counsel for Government: In order not to delay the proceedings, counsel for the Government at this time enters objection to the witness reading from Respondent's Exhibit No. 8, for the reasons which will be stated when the Exhibit is offered in evidence. The objection will go to the Exhibit and not to the fact of reading from it. In other words, I just want to be sure to cover the ground that we object to this Exhibit, and we naturally would object to reading from it just the same as we object to the introduction of the Exhibit iself.

A. The first page is simply a letter of transmittal, the subject matter covered therein being more specifically dealt with in the latter pages. Beginning on the second page is a discussion of going value and what it is, which leads up to a short definition of going value which is as follows:

Going value is that element of value of a property which represents a difference between its structural value and the value of a property as a whole with its developed income, organization and established business, and that going value is dependent or arises (T. 545) from the fact that: first, a property cannot be instantaneously created; second, that without established business a property would be practically valueless; and third, that property cannot be created [fol. 560] and provided with an established business without creating values outside of the physical structure. It is necessary to compute going value in connection with the reproduction of a property, as the property is not completely reproduced until the business, as well as the physical parts, are reproduced. Accordingly, as outlined on page four and summarized thereon, when reproducing a property as today we have to again consider the expenditures that are directly necessary to establish anew the organization, or indirectly necessary to compensate for inadequate revenues in re-establishing the property. The factors essential to a reproduction estimate of going value are outlined, beginning on page thirteen. One starting his computation of going value by the comparative method must have the following data:

First, the cost of reproducing the physical property as of the date of inquiry; second, how much time in the near future it will take to rebuild the plant, that is an engineering question and has to be estimated every where whenever any engineering construction is undertaken; third, how much time it will take after the physical plant is built and ready to operate before it will have a full line of clients, or customers, and fair normal or proper revenue; and, fourth, how rapidly this business (T. 546) will be acquired, or, in other words, how much businss can be readily secured, how much more can be secured with a reasonable expenditure of time and effort; and, finally, how much of the business of the present company can only be attached by great effort and considerable outlay in cost, if at all. It is also necessary to know the value of money properly secured, and the value of money used in the particular business under consideration; in other words, fair return. It is also necessary to have a knowledge of the recent income growth of the business that is under consideration. Having these data, it is then practicable through the forecasting and comparison of two sets of accounts to compute going value. These [fol. 561] two accounts are: first, the income and operating account of the company, as it now exists, forecasted into the reconstruction or reacquirement of revenue; and second, an exact similar set of accounts for a plant not yet conceived, but an exact duplicate, exactly similar in its physical make-up, and in its ultimate business capacity during the period when the physical plant is being reconstructed and the business rearranged. A comparison of these two sets of accounts reduced to present worth, as of the date of valuation or the date of the computation, gives a measure of the going value of the property by the comparative method. It can be (T. 547) visualized in this case by assuming that there is an investor ready, willing, and able on June 30, 1929, the date of valuation, who desires to enter the stockyards business in St. Joseph. His first procedure would be to call upon the management of the present yards, tell him of his desire to go into that business, and ascertain from them if the property can be acquired. They place a price on it which we are assuming is the cost of the physical plant plus their measure of going value. The prospective purchaser takes an option at that price, he then employs an engineer to tell him what it will cost to reproduce that

property. He, the engineer, estimates the physical cost of reproduction and advises his client as to the results. The client, or the prospective buyer, then returns to the manager of the stockyards company and tells him that he is advised that the property can be reproduced for an amount considerably below that mentioned in the option. The management of the yards tell him that they are selling more than a physical plant, they are selling a plant with an established business, not only with the capacity for earning, but one that is actually earning. The prospective investor is then confronted with two alternatives, he may either buy [fol. 562] the existing plant at a price including its going value in which case he immediately (T. 548) steps into the present revenues, or he may decide to build an exactly similar plant, which over a period of time will develop earning capacity equal to that of the existing yards. Assuming he takes the latter course, it will take him a year to build the plant. Obviously, during that period he will receive no revenue from it; the only revenues being from income or idle capital plus that previously allowed as lost interest during construction. Then after the plant is finished, which we will say can be accomplished in one year at a cost estimated as the reproduction cost of the property, he will find that during his year's interval much of the receipts of the yards will have been diverted to other yards, and can only be reattached with considerable effort. By intensive work, however, he assumed that after a period of years all of this business, or its equivalent, can be reattached to the yards, and if at that time the prospective investor, or the builder, as he now is, calls in an auditor and asks him to make a comparison of his financial structure under this building program, as compared to what it would have been if he bought the yards, he will find that the net revenues will have been less than they would have been had he purchased the going or operating yards, by an amount which is the amount computed for going value; that is, the amount he could have afforded to have paid, in addition to the cost of reproducing the physical plant and been even (T. 549), whichever course he would have pursued. That, as I see it, is a measure of the going value of this property by the cost of reproduction or comparative method.

All of these computations must necessarily be reduced to present worth as of the date of the valuation, because a dollar's earnings two years after the date of valuation [fol. 563] is not worth a dollar as of that date. I have used recognized tables reducing present worth by 6%. That concludes an explanation of the first half of Respondent's Exhibit No. 8.

Beginning with page 20 the balance of the Exhibit contains a detailed discussion of the actual computation of the going value of the St. Joseph Stockyards Company (T. 550). I shall now explain the computation there contained:

The figures for the basis, or the bases, of this computation were secured from the company's estimates of reproduction cost depreciated, and from the books of the company so far as operating accounts are concerned. The appraisals of the physical property figures were furnished to me by Mr. Kosters, and they have been used as a basis of this computation. I now understand that there is a slight error in those figures of approximately $20,000.00, due to some adjustments made prior, I believe, to this hearing, but which does not affect the going value computation only to a minor amount, less than a thousand dollars.

The effect of such a difference would slightly increase the going value as herein computed. In view of that I think my computation is fair.

I thought it unnecessary to make any change or recomputation on that account. The appraisal of the land was furnished to us by a real estate expert employed by the stockyards. We have also been furnished, and I have taken, many statistics as well from the books, detailed statistics of income and operating expenses of the stockyards company for the past six years, and numerous data relative to the livestock receipts since the opening (T. 551) of the yards. Have also been furnished data relative to the origin of shipments by Mr. Carroll, the traffic manager of the yards. The going value computation is made as of the same [fol. 564] date as the physical cost of reproduction, namely June 30, 1929. The computation is based upon a period of one year, beginning with June 30, 1929, and ending June 30, 1930, required for the physical reconstruction during which time the stockyards facilities would necessarily be suspended and the receipts now coming to the St. Joseph

yards would necessarily be diverted elsewhere. In this computation of going value there are some credits to the starting plant in the form of interest, interest on idle investments, interest on expenditures made during the year, and also, as well, the item of interest during construction, which has previously been added to capital account, must be credited to the starting plant as a revenue under this computation. In this computation I have accordingly credited as a revenue of the starting plant the allowance for lost interest made by Mr. Kosters, of $84,299.00, for structural items, that being the depreciated amount, and $106,986.00 for land, a total of $191,285.00, which is a revenue to this starting plant. The computation of going value by this method, which is an estimate of the cost of reestablishment of an income is largely dependent in amount upon the amount of income of the business to be acquired and the time required for its acquisition. It is therefore necessary to ascertain the facts relative to the income, its growth, the sources from which it is derived, and the factors affecting its recovery. During the past five years the (T. 552) receipts of stock at the St. Joseph Stockyards have varied from a minimum of 49,640 cars in 1927, to a maximum of 60,116 cars in 1924, the average for the last five years being 54,275. All of these figures express drive-ins as equivalent carloads. There has only been one year since 1913, that is, in the past sixteen years, in which the receipts have been less than 50,000 cars. I have considered the business to be reproduced, or being reproduced, to be 54,275 cars.

[fol. 565] The facts relative to the recovery of revenue were necessarily secured, or best secured, from those familiar with the business and the factors which influence it; order to secure my basic data on this point I interviewed a number of men who have been familiar with the business of the yards and the factors influencing it for a great many years. I talked to Mr. Carroll, who has been connected with both the stockyards and the Belt Railway as traffic manager, and who has been during that time largely devoting his efforts toward inducing shippers to come to these yards. I also inquired from Mr. Vant, who has been secretary and treasurer of the stockyards for many years, and from Mr. Barkley, who has been manager of both the Belt Railroad and the yards for many years. Also interviewed individually four of the best informed commission men in the yards,

men who were selected for diversity of points of origin of receipts and who would, therefore, give me, as I felt, a typical cross section of receipts and their recovery. I asked each one of (T. 553) these,—well, first, I asked Mr. Carroll to make an analysis of the points of origin of shipments, and asked him to divide them into three zones, the first zone to include the area within a hundred mile radius of St. Joseph; the second zone to include the area between two concentric circles whose centers are St. Joe and whose radii are 100 to 350 miles respectively; and the third zone to include the area outside of this second zone, that is, the area further removed than 350 miles from St. Joe. The analysis of the receipts shows approximately 40 per cent from the first zone, that is, within a hundred miles; 25 per cent from the second zone, and 35 in the third zone. I understand that these figures substantially check with the results of a very detailed survey made by Dr. Dozier for the Department.

I then asked each of these commission men who was inter- [fol. 566] viewed individually and without prior knowledge of the questions to be asked him, to state, expressed in percentage, the receipts which could be recovered in the first year, and at other stated intervals, from each of the three zones. Their opinions as to ultimate recovery checked very closely, in fact, at five years, at the end of five years, all estimates fall between 75 and 79 per cent recovery. There was slightly more variation in the early years, which could be, and which is, correctly interpreted as a reflection of the areas from which the individual commission men largely derive their business. The composite rate of recovery of business, as expressed (T. 554) by these men, is shown on a diagram appearing in page 29 of the report. The lower line on the right half of the diagram, labeled "Receipts of the Comparative Yards, Average of Five Estimates," is the average as they were given to me. I had four commission men and three stockyards employees, Mr. Vant, Mr. Barkley, and Mr. Carroll, had previously discussed this question on recovery of receipts, accordingly, I gave their opinion the weight of but one, whereas I gave each of the commission men the weight of one, making five total, although there were seven of them in fact.

Counsel for the Government not being sure that the previous objection goes to statements of the witness that are not read from the Exhibit objects and moves to strike

so much of the testimony as states what he was told by employees of the Stockyards Company and commission men, because it is hearsay (T. 555). Whereupon counsel for Respondent moved to strike the entire testimony of witnesses Christensen, Dozier and Bachmann on the ground that all of such testimony is based almost entirely upon hearsay. Counsel for the Government's objection was overruled and both motions to strike denied.

[fol. 567] Referring again to the diagram on page 29, there is a second curved line shown on the right part of this diagram, slightly above the one just referred to, which is labeled "Adopted Recovery Curve." This curve is the one used as the recovery of business by the stockyards, rather than the composite average. It shortens the total recovery period from eight years to five years, and for periods after the initial year of operation adopts a recovery of receipts about ten per cent, more or less, more rapid than the composite of the five estimates, and more *rapid than any estimate made.*

With the rate of recovery established, it is possible through a study of the present income and operating accounts to estimate the income and operating costs of the starting plant during the period when it is reacquiring the business at the rates shown on the diagram on page 29 of Respondent's Exhibit No. 8 (T. 556). The total estimate, estimated operating accounts, are shown in Table 1, on page 32 of the Exhibit. These figures are based upon an analysis of the same items on the books of the company in the past few years. On page 33 is a diagrammatic representation of the computation of going value, this diagram showing the gross income and operating costs as estimated for the comparative yards, and by cross hatching on the diagram the income lost due to the reconstruction of the property and the reestablishment of the business.

Computation of the amount of going value is made by a comparison of the two sets of accounts, one of a continuation of operations by the existing company during a five year period as compared to the operations of this starting company during the same period, when it will have been reconstructed and its business reacquired. The difference between the two, reduced to present worth, is the measure of going value. The computation is shown in [fol. 568] Tables 2 and 3, which are pages 36 and 37 of this

exhibit. The figures in column — of Table 2, are the net income from operations of the starting property, as shown in the last line of Table 1, page 32 (T. 557). It might be helpful to trace one year's computation through. Take, for instance, the year 1932. On page 32, Table 1, the equivalent car receipts are shown to be estimated at 46,000, produced an income of $920,000, and with operating expenses of $581,010, giving net after operations but before depreciation or fixed charges of $338,990. That item is carried forward into Table 2, page 35, for the year 1932. In the second column, net income from operations, the total investment in the comparative yards as shown in column 3, is the valuation of physical plant and land, plus interest during construction, the figures for which were furnished to me by the company. The 4th column there is based on a growing increment of $579,393 up to that date. This, added to the investment in the comparative yards as shown in column 3, gives column 5 amounting to $4,951,535. This amount, subtracted from the figure at the head of the table of $5,040,000, which is the entire capital assumed to be in the hands of an investor when he starts to build, being enough to cover less interest and going value, leaves the amount invested at 4%, shown in column 6, as $88,465. This figure, subtracted from the similar figure in the year above, gives $147,502, the amount withdrawn by the investor during that current year. Now, on the amount which stays in the bank during the entire year, we credited him with 4% interest (T. 558), as shown in column 8, and the amount which is withdrawn during the year we assume to be withdrawn at a uniform rate, giving him 2% on average bank balance or 1% on the amount $1,475,000, as shown in column 9. In 1932, therefore, he received a total of interest of $5,013, [fol. 569] which, added to the $338,990, net from operations gave him a total income, as shown in column 12, or $344,003, which figure is carried forward to page 37, column 3, as the income from the comparative yards. Now, had the purchase of existing yards, as indicated for that year, instead of being $344,003 would have been $426,580, leaving the cost of income of existing yards of $82,577. Inasmuch, however, as 1932 is in the future, a dollar then is not worth the dollar it is of the date of valuation, this figure is reduced to present worth of 6%, and amounts to $65,409. That amount is the going value increment for that year,

and that added to the total going value increment of the 3 years previous of $579,393, gives a going value increment up to the end of 1932 of $644,802. That is simply a typical year. That process is repeated for each of the years. The going value assumed at the beginning of this final computation was $667,858. The going value is computed as $666,666, showing a resulting difference of $1,192, or 1/5 of 1%, and the computation is not carried to greater refinement (T. 559).

Before starting my computation I had to assume some particular amount of going value and I worked it through and tested it out and if my test showed the assumed amount was materially wrong I would have to start all over again. When I finally obtained a result which is close to the figure from which I started, for the purpose of the computation, that result can be assumed to be correct because the computed going value will not check the assumed going value until the assumption is correct. This is the cut and try method, as we term it, and when the two do check, then the computation, or the original assumption, is then correct (T. 560).

After the computation is made it is a simple matter to summarize or check the computation. It is all on one sheet [fol. 570] which is somewhat easier to check. This has been done in Table No. 4, appearing on page 39 of the Exhibit, which is the investor's status, under Case A, in which he buys all existing yards. As set forth, his net revenue of $426,580 each year during the six year period is reduced to present worth, and it shows that if he bought, he would in the course of that period have a revenue which, reduced to present worth as of the date he was making his decision, would have been $2,097,630. If, however, as outlined in Case B, he decides to build a new stockyards, he will get less revenue during this period, and the revenue from unemployed capital, less interest and operations for each of the six years, reduced to present worth or valuation, would have totaled $1,430,967. The difference between his net revenues under these two alternatives is $666,663, which checks the going value, as computed, within $3.00.

Now, going value by this method is, to some extent, a reflection of the rate of return. In other words, with a given investment, the value of the attached business is greater with a good paying business than with a poor one,

up to the point at which fair return is exceeded. I have accordingly run through computations on a couple of other bases, so that if a basis of physical plant value were to be taken (T. 561), other than the one which I have taken, there might be some measure of going value. On page 40 of the report I stated that if this going value computation had been based upon earnings sufficient to produce 7½% instead of 4½% return, after allowing approximately 4% for annual depreciation, and the 4½% rates are approximate at present and constitute the basis of this computation, based on the physical figures which were given me, the amount computed for going value would have been approximately [fol. 571] $1,000,000 instead of $667,000 as herein computed. That is a measure of the increased value of a 7½% over 4½% on the return, and the same return for same plant value. Then, if this computation had made use of the present earnings or a total valuation of $3,600,000 instead of approximately $5,000,000 as used in this computation, the amount of it for going value would have been approximately $675,000. I have not computed this going value by an adjustment of earnings to a fair return basis. I have figured the going value based on the earnings as reflected in the Company's records, and based upon the company's figures as to plant valuation (T. 562).

The present computation amounts to approximately 13¼% of the total value of the physical plant plus going value. Exclusive of going value it would be 15¼%. Had the computation been figured on a 7½% return, or a revenue sufficient to produce 7½% return on the total value, the percentage would be approximately 18¾% of the total value, including going value, or 23% of the value of the physical plant. Counsel for Respondent offered in evidence the Exhibit which had been marked Respondent's Exhibit No. 8 (T. 563).

Counsel for the Government: The Government objects to the introduction in evidence of Respondent's Exhibit No. 8, and at this point renews its objection to all of the foregoing testimony of the witness and moves to strike all of the foregoing testimony of the witness, for that the Exhibit and the testimony constitutes neither statements of fact nor of opinion, in the legal sense of the latter word, but theories, surmises, conjectures, prophecies, guesses, legal conclusions, definitions which are in the province of the

courts to make; also, for that the witness is not testifying to anything in his previous training or experience which has qualified himself, as distinguished from any other well [fol. 572] educated man, to discuss theories and conjectures upon this subject; also, for the further reason that it appears from pages 24 and 25 of the Exhibit, and also from the testimony of the witness, that a basic element in the witness' computation of so-called going concern value is based, not upon any knowledge that the witness has or has acquired, but wholly upon opinions not facts, opinions, guesses, surmises and conjectures stated to him by certain persons who are named and certain commission men who are not named. Counsel for the Government (T. 564) respectfully states that the basis of his objection at this point is not to that common ordinary process which any investigator must necessarily use of asking some questions as he goes along, and which has been used by other witnesses who have testified in this proceeding, but to taking bodily the opinions of persons who have not been called to testify. The estimated recovery of receipts lies at the very basis of the computation. The witness has not pretended to know, himself, anything about how long it will take to recover these receipts. He is, therefore, effectively immunized against cross-examination, and it is a very important point, unless his informants be produced as witnesses.

Objection overruled, motion to strike denied (T. 565).

Respondent's Exhibit No. 8

This exhibit will be found in the volumes of this abstract entitled "Exhibits."

At the suggestion of the Examiner the names of the four men interviewed were given by Mr. Howson, they were Mr. True Davis, Mr. Thomas McKee, local manager of John Clay & Company, Mr. Austin of Austin, Hammil & Hoover, and Mr. Baker of Vallery, Baker & Bruce.

[fol. 573] In the investigation which I have made to determine the going value of the St. Joseph Stockyards Company I followed the same method as is used in estimating the cost of reproduction new (T. 566).

An engineer, either in estimating the cost of constructing a new property or in reproducing an existing property must have certain fundamental values. He must have in-

formation or arrive at a conclusion as to the time required for the execution of his construction program; he must ascertain the costs of materials and labor, and the availability of supplies of both that entered into his construction or reconstruction program; he must ascertain by inquiry securing all the information he can get, the character of soil he is likely to encounter; the differences he is likely to find in the execution of his program; and based upon all of the local information which he must necessarily secure in most cases by inquiry, he develops a construction program and an estimate of unit and total costs, and arrives at a conclusion as to the time and cost of constructing or reconstructing the particular property in mind.

That type of inquiry is the same type of inquiry I made in this case. In both instances one must rely upon facts they get from other sources (T. 567).

I am engaged continually in advising both public and private clients as to the cost and construction period of undertakings which they have in mind constructing. Within the last year we built, designed, and supervised the construction of three filtration plants in Texas; doing work now in Baton Rouge, La.; did water softening work in Florida, and doing work in Arkansas, Illinois, and Indiana and other States. It would be impossible to have a detailed personal familiarity with costs and conditions in each one of those places, and yet, by inquiry, we developed the information essential to the making of careful estimates [fol. 574] which will if those costs are borne out by actual construction later executed will furnish a check upon the accuracy of computations made upon just that kind of information.

Those computations are made every day by appraisal engineers. That is the usual procedure. Those who compute going value by this method follow the same procedure (T. 568). The method is used more largely, I think, than all other methods combined at the present time. In each and every instance the appraisal engineer has to find out from someone the rapidity with which the business will return. He fortifies himself with all the information he can get, and all the light he can get on the subject from those best informed, before he makes his computation. That is what I have done in this case. Then I increased the rapidity, as determined from my investigation, to the extent

indicated on page 29 of Respondent's Exhibit No. 8. I accelerated the total recovery of the business three years (T. 569).

Cross-examination:

I have been studying and testifying about going concern value for 15 years. My testimony in the beginning was substantially as it is now. I have always used this method. My partner, Mr. Alvord, originated this method, and I learned it from him. I have not carried on his method just as he developed it, naturally there have been some changes from time to time, some before and some after I began it. One important change is that in the early computation lost interest was not credited as an earning to the starting plant. That has been done for some years, I think, correctly done. To that extent, I think, the early computations were in error. That is the most important change. The manner of presenting it, the manner of set- [fol. 575] ting it up, has been modified from time to time in an effort to make it easily understood and the (T. 570) arithmetic more easily followed. The theory was first conceived by Mr. Alvord and another engineer named Bennezette Williams in 1898, I believe, in the Dubuque Iowa Water Works Case. It was very different then from what it is now. However, that was the beginning of the attempt to compute going value by the reproduction or comparative process. The theory has been refined practically continuously since that date, to make it more easily understood and develop it as we went along. Mr. Alvord is still living, and to some extent still testifies on this subject. During the last two or three years he has been devoting his entire time to the preparation of an exhaustive treatise on public utility valuation. For that reason he has not testified, I think, for possibly three years. He is also a hydraulic and sanitary engineer, and that is his specialty. Hydraulic and sanitary engineering comes under the general classification of civil. I think the training and experience of a civil engineer gives him a peculiar qualification for determining going concern value, as distinguished from the qualifications of mechanical or electrical engineers only in degree (T. 571). The civil engineer is fundamentally a builder and estimator. He must neeessarily be so because

everything he does must be built in the future. You cannot build or rebuild in the past. He is also daily an applied economist because the things he estimates he must later build, and that includes the financing. That is also true of the mechanical engineer, to a somewhat less extent. He builds of a different type than the civil engineer. The mechanical engineer makes his estimates and looks into the future in the same way that the civil engineer does, the only difference, I think, between them fundamentally is possibly in degree. I think all engineers, who are also builders, [fol. 576] are in a way applied economists. I think it is fundamentally a part of the profession of civil engineering to operate businesses after they are built. In fact, the utilities of today are continuously drifting more toward the operation by scientifically trained men and engineers (T. 572). I do not mean operating in the form of employing all labor and going through all of the operations. We do not do that. It is supervisory operation only, consulting operations. I mean, for instance, that we design the water works and then continue with it as a sort of supermanager, advising on policies. It is not anywhere near as big a part of our business as construction, but we do it very frequently. Sometimes after we have built a water plant we advise on the advertising campaign, and prior to the building of a water works plant, where clients ask us as to whether or not such a plant should be built and what it will cost, we almost invariably include in that estimate the prospect for it being a remunerative one and how much or how long it will be required before it does become a remunerative one. That is part of practically all of our advice to clients. I have not had a similar experience with relation to stockyards. I have never built a stockyards (T. 573), nor planned one, nor advised a client as to the building of one. I never had occasion to estimate the receipts and income of a stockyards that actually was to be built.

In the 15 years that I have testified on going concern value, some of the cases have been condemnation cases and some rate cases, and in some instances I was acting for a private purchaser and in some for a public purchaser. I pursued exactly the same method in each (T. 574). I have been testifying in rate cases about 15 years. So far as I

know, as I now recall, courts have not expressed themselves as to what method they use in arriving at their conclusions, [fol. 577] but there have been specific allowances for going value in many cases with which I have been connected; that is, I have testified as to this method and then there has been some kind of an allowance made. In some cases it has been the amount I recommended, and in others it has not. I believe that the amount I recommended was approved by the Appellate Court in the Bluefield Water Case, but I am not entirely clear on that because I have testified at Bluefield four or five times from 1915 on. In that case the Supreme Court of the United States did not mention that specific item but referred the whole thing back to the Utility Commission on a confiscation issue (T. 575). In other words, they reversed the lower court, but the Supreme Court of Appeals in West Virginia specifically referred to the inclusion of going value in the amount of approximately 15 per cent, which, according to my recollection, is the amount to which I testified.

This is not just a theory to be used in rate cases, but if a client came to me with millions of dollars and wished to buy the St. Joseph Stockyards and desired me to tell him just what the stockyards and business was really worth, what he could afford to pay for it, I would use this very same method in ascertaining that. I would advise him that he should pay some $666,000 more than the physical valuation. In fact, I have done that in the past year several times on water works properties, several of which have been transferred on the basis of that recommendation. They were transferred to private corporations, one of them recently transferred from a willing seller to a willing purchaser, both private companies, with an inclusion for going value of 15 per cent. In that case I pursued the same method that I have pursued here (T. 576). In the case of a water utility, about the only people that know anything about the company's business are the men in the [fol. 578] company. There is nothing comparable to the commission men. Accordingly, I made this same type of inquiry from the manager and the distribution superintendent, and I ascertained the facts relative to how long it takes to get business on their extensions, new mains, and on that data made the computation as to the value of busi-

ness. In that case I did not make my calculation only on the actual data as shown by their records as to how long it took them to get new business on extensions of the mains, and that was a part of what I considered. I looked up that data relative to specific extensions, insofar as it was available, and considered that in connection with the statements and opinions of the distribution superintendent and the general manager of the property who had been there well over thirty years.

As to whether there was any comparable data to examine in respect to the St. Joseph Stockyards (T. 577), I secured this information by the same kind of inquiry. I found, for instance, that the St. Joseph Stockyards had, through its traffic manager, for illustration, gotten a lot of stock from southwestern Kansas, as I recall, by getting or inducing, I believe it was the Missouri Pacific, some railroad, to put on train service which did not, prior to that time, exist, and that enabled them to build up a business in that territory that had, prior to that, not been there, so that I made inquiry along those comparable lines. I made inquiry to determine what effect the putting on of the train had on receipts and whether they continued to come. I cannot tell you how rapidly the receipts did grow by that train. I am simply giving that as an illustration, effecting my use of the information that was furnished to me by these men. I did not make any computation based on that train. I merely had the information from the traffic manager, that after that train was put on, receipts increased. That is the same [fol. 579] way that I did with this water company. I found out that after they laid the main, they would get some business off of it, and it would take them sometime before they got all of it, got saturated (T. 578). The patrons of a stockyards are the ones who will pay interest on the money, if we assume that the rates are always going to be able to yield a fair rate of return. In a sale and purchase transaction, the seller is naturally seeking to obtain all he can and the purchaser to pay as little as he can. I have represented the purchaser in some cases and the sellers in others, and in the past year have been agreed upon by both parties. My procedure is just the same in any of those events. Just as the purchaser is interested in a low valuation, so are the patrons of a public utility,

(T. 579), and the owners of such a utility are interested in a high valuation, and I think that interest would extend to the officers as faithful trustees for the owners. As to whether, without any bad faith, the natural tendency would be for the owners and officers to take a roseate view which would increase values, I should say quite the contrary was true, if we are talking about business. Possibly they would take a roseate view as to what is here and pessimistic view as to the difficulty of recovery. I do not know that I exactly sense your question. In most rate cases in which I have testified, the utility was contending for higher valuation than was the regulating body. I think that is just a natural tendency. In my investigation to determine the time it would take to recover the receipts of the St. Joseph Stockyards, I consulted the patrons of that yard only through the representatives who sell their stock for them (T. 580), who are the commission men. I think the commission men are interested in the amount that their principals pay the stockyards. I did not interview any representatives of the great livestock associations. Eventually, [fol. 580] it is the views and opinions of the shippers of the livestock which governs where the livestock will go, although that opinion is very largely modified, I think, by others. However, eventually the shipper sends his livestock where he wants it to go, but he frequently changes his mind, even enroute. I think the shipper's opinion as to what he would do under the circumstances I assume here would be material and interesting, but those shippers number many thousands with an individual narrow viewpoint (T. 581), representing a small locality. I am endeavoring to get a typical cross section of this producing area as affecting this yard, and it was for that reason that I selected commission men as having a contact with the entire producing area rather than one railroad station. The shippers have great national organizations, there have been shipping organizations organized. I assume that those organizations have managers who devote their time to the study of just such questions as that, but as to that I do not know. I made no investigation to determine that at this market. I cannot tell you what commission firm on the St. Joseph market handles the greatest volume of receipts. I could not tell you on total receipts of all sections whether it is

the Farmers Union. I do not know whether they do or do not (T. 582). I do not know whether the Farmers Union represents the livestock producers or not. I did not make any attempt to find out. I had no contact with that organization, and I do not know whether they have a broad knowledge of the subject or not. As to my knowledge of the broad knowledge of the four commission men, Mr. McKee, as I recall it, is the St. Joseph manager for John Clay, and as such, I think, handles something like 55% of all the sheep that come to this market. His business is largely derived from within a radius of one hundred miles [fol. 581] of this market, so far as cattle and hogs are concerned, and from the third zone, that is, the area away out, Colorado sheep, mostly. I understand that in sheep he has a very broad clientele. Baker's business is largely in the first and third zone-. He does not get much from the intermediate zones. Davis, about equally distributed, he told me that they are in all of these zones, and I outlined them to him on the map. They are not all sheep men. Davis' business is largely cattle and hogs, not very heavy in sheep. John Clay is represented by McKee, and in this last year handled about 55% of all the sheep coming to this market, I am told. Mr. Austin's business is very largely in the second and third zones, pretty much all classes (T. 583). I think they handle all species of livestock, each of them handles all species. I asked Mr. Barkley to get me the four commission men who most completely covered the territory, did the most business, and were most familiar with the factors affecting what was bringing that business to this market, and what would keep it here. I told them that the receipts of the stockyards had been classified as between three zones, which I indicated to them,—that is the first one a hundred mile radius, the second, the area between one hundred miles and three hundred and fifty miles from St. Joe and the third all outside of that line. I told them that what I wanted to know was,—first, if the stockyards were to be closed down for a year, how long would it take to completely recover all of that business or its equivalent, which I told them was some 54,000 cars, and told them its distribution. Second, how much of that, after getting that ultimate (T. 584) point, how much of the receipts could we recover from each one of the three zones at the end of

twelve months' time, or in one year's business,—and asked them to express that in percentage, and then I asked them [fol. 582] to express the same thing at later periods by zones. Those figures were then tabulated and expressed in cars, and percentages from the various zones transferred to carloads. I do not recall that I asked any of them if he had ever operated a stockyards. I asked them how long they had been in the commission business, how extensively their business covered the areas, how much of their commission experience had been in the St. Joseph yards. I did not ask any of them if he had ever been traffic manager at the stockyards, and I did not ask any of them if he had ever seen stockyards closed for a period of one year and then reopened, but I asked them if they knew anything about the effect of the flood at Sioux City upon their receipts, which temporarily closed that yard many years ago, and tried to get such information as I could that would show some indication from their own experience of a somewhat similar situation, although for a less extended period. Speaking from memory, I would say that the flood at Sioux City was around 30 years ago (T. 585). None of the commission men I consulted were there. They did not know anything about it except what they had heard. None of them had ever heard of a stockyards company closed down temporarily. They could not give me any information from their own experience as to similar conditions. As to the closing of the Sioux City stockyards, I am speaking simply from recollection, it is my recollection that shipments were diverted for a short period only, a matter of maybe a week or two.

None of the commission men had ever heard of a case where a group of people decided to build a new stockyards and the old stockyards gave up the ghost and went out of business. What I have said about the commission men applies to the officers of the company, except, of course, that the officers of the company have operated a stockyards. [fol. 583] They had discussed this jointly among themselves rather than individually (T. 586). I think neither Mr. Barkley nor Mr. Carroll nor Mr. Vant ever had any experience with starting a brand new stockyards and trying to recover the business of the old stockyards that had gone out of business. I do not think that the assumption that I made in respect to a new stockyards starting to be

built and the old stockyards going out of business has ever occurred in actuality in its entirety. I have no personal familiarity with any data or experience of mankind upon the construction of a new stockyards under present conditions as large as the St. Joseph stockyards and the attraction of business to it. So far as I recall, I have not discussed that with the St. Joseph men. I think there is a lot of human experience back of my assumption, but it is not the exact counterpart of the situation as outlined. To illustrate, I think, I know of no case where a water works has been wiped out or laid idle for a year while somebody built another one, and yet I know I can compute the going value of a water works without that experience and arrive at a conclusion which a willing purchaser and a willing seller include in their sale agreement. I would liken this estimate of the recovery of receipts to an engineer's estimate of the cost of constructing a physical property, and I say that one is no more difficult, no more speculative than the other (T. 587). Thousands of properties have been constructed in the future from estimates made by engineers. Some engineers may use certain formulae for computing cost of labor in making appraisals, but we do not. We estimate each job on the factors that we find in the particular locality covering the output and cost. As to whether we use the union wage scale, we use what we think is going to be used when the property is built, and we estimate on the [fol. 584] basis of the cost of labor in the community as we think it will be at the time of construction. We base our prognostications of the future only to some extent on the conditions at the time we are making our estimates (T. 588). We always survey those organizations with respect to conditions then existing, and as they will, so nearly as we can forecast, exist during the construction period. In determining what that labor will be during the period of construction, we make reference to the experience of the past. I find out everything I can about the past and the conditions that affected that case in the past. I do not necessarily, in making a construction program, use the price prevailing as of the moment. As an illustration, cast iron pipe a year ago was selling at $27 Birmingham base. My judgment told me, although that price had been in effect six months, a study of the factors influencing that price told me that that was liable to change and would change.

Accordingly, work that was estimated during that period, I didn't use $27, I used $38 to $40, and subsequent events have justified that. Had I not done that, my estimates would have been a third low on that item today. When we have made estimates in the past and the property has been constructed and the actual cost developed, we always compare those things. That has all added very materially to my fund of useful information in making estimates for the future (T. 589). I have had no such similar guiding star with respect to the recovering of stockyards receipts. I have never gone through a stockyards business reconstruction, nor has anyone else to my knowledge.

One can get the market price on materials by inquiry, and also the price trends, although the price trends on cast iron pipe a year ago had been down since 1920, but, substantially, that did not indicate that it was going any further. In fact, a correct analysis of that situation would show that the trend, as indicated, was not a correct trend. [fol. 585] We can ascertain today just exactly what cast iron pipe is selling for, and then can use that as a basis for determining how much above or below that we think it will be selling later on (T. 590). Personally, we do not have any such present figures with respect to the recovery of receipts at a stockyards. That is why I endeavored to secure it from the best informed people that I could. I do not know of anyone who does have such actual figures just exactly comparable to the present price of cast iron pipe, but the figures are just about as certain. I think it is fully as certain because cast iron pipe in the last year has taken a 50% change in price. The very fact that *that* all of these men, interviewed individually, had a range very narrow, men of experience, indicates to me that their opinion was correct within a smaller range than that given on cast iron pipe. I have checked that on water works, where we have told clients, when we were preparing estimates, how much they should allow for going value. The plant was built and some years later they checked what the cost of developing that business had been. It checked very closely with figures made beforehand, all of the same kind of information, as the stockyards computation has necessarily been made. I did not say that these men I consulted about the recovery of stockyards receipts had more definite information on that subject than could be obtained today as to the present

price of cast iron pipe today (T. 591), but I say that there has been a much greater fluctuation of the prices of that cast iron pipe in the last year than was reflected in the individual estimates or opinions of these men. We cannot ascertain the present rate of recovery of livestock receipts to the head. As to whether there is such certainty in respect to the present recovery of livestock receipts as there is in relation to the cost of cast iron pipe, there are published prices on cast iron pipe, and there is a range of [fol. 586] a dollar or so a ton on what you can buy it for, depending on the attractiveness of your order.

I found that all of the estimates that I got on how long it would take to recover the livestock receipts were quite close together. I think the fact that those figures are close together should inspire a feeling of security in the accuracy of those figures (T. 592). I endeavored to select men who had no common interest, that is, I selected the three company men and then the commission men, whose interests are, in many ways, diverse.

I made this same computation for the stockyards at Buffalo. There was a substantial agreement there. In all of the five yards in which we have made this inquiry, and in two other yards, for which I have made the same inquiry for switching railroads, that is, total of seven yards, I have found a very close agreement between those conversant with the industry as to what would happen if the yards were wiped out and what would be required in the way of re-establishing the business, and that was true in the estimates upon which the computation was made on the St. Paul Stockyards.

St. Paul was the first one of these cases, and there were not as many men interviewed there as in the subsequent cases, that was a pioneer case (T. 593), and while I do not recall the figures, there was not a very wide diversion of opinion there, as I recall it. It was some four years ago. I think my information there came largely from, speaking from recollection, *from* Mr. Kube, the traffic manager; from Mr. Good, the manager; from Mr. Luening, who at that time was manager of the Armour Packing Plant and who had been at Fort Worth during the period of the construction of those yards and was familiar with the event incident to attaching business there. I also consulted with the Government representative there, Mr. Haskell, and I

[fol. 587] think, on that first investigation, I did not use commission men's estimates. That is my recollection. There may have been others that I consulted in addition to these four, but I recall those. The opinions of those I consulted at St. Paul were in close agreement. Without having the figures I do not know whether I would characterize them as close or remarkable. In stating that the commission men were interested in the rates, I mean that they would be interested in rates that would enable them more easily to attract shipments to this market (T. 594). That is, they would be interested in having lower rates.

I did not state that in all these water works or other utilities whose going concern value I had estimated had actually gone out of business and a new plant been constructed. I stated, or meant to state at least, that the water works were in the same position as the stockyards in that respect. I do not know of any water works that had been wiped out and the plant and its business reproduced (T. 595). Some of these water works which were purchased by private investors upon my estimate of going concern value are the Paducah, Kentucky, Water Works, which was transferred at exactly the price I set. The Baton Rouge, Louisiana, Water Works has, within the past three weeks, had an offer exactly at the price I set. The Lexington, Kentucky, Water Works was transferred as a result of an appraisal which I made for both interested parties. I do not know the exact amount of the price. All of those transfers were from one private party to another private party, and the purchasers therefore had no interest in the plant. I cannot tell you how those prices compared with the net earnings of those utilities, capitalized at the market price of money at the time, because I did not figure them that way (T. 596). As to how the price compared with the market value of the outstanding securities, water works securi- [fol. 588] ties in isolated companies are purely a local proposition and in most cases there is no market, other than the cities in that immediate vicinity and as a usual thing, they are very closely held, most of them by families or estates. The market prices that have been paid for these stocks, in the cases I mentioned, in addition to assuming the bonded indebtedness, I think have been as high as $400 a share and as low as about $40 a share. As to how those prices reflect what was being paid, in fact there had been

no sale, not in either one of those properties, I do not believe there had been a stock transferred for years, so that I know of no way in which one could compare that price paid with so-called market value, as I understand it. I know only in a general way whether the net earnings of any of those companies represented a fair return upon the price paid. I know that one sold for materially more than its capitalized net earnings, and without having made that computation I would say that others were producing a substantially fair rate of return on the price paid. I have followed the history since that sale of the one which sold for more than its capitalized net earnings. It has not been making a fair return upon the sale price. It is operating under a franchise which does not expire until 1934, and I think there will be no change in the rate structure until that time (T. 597). Our accounting for an investor buying at a price upon which he could not obtain a fair rate of return is because he ultimately expects to get more than he was getting at the time of purchase. He expects future income to make up for what he is now losing.

I think the matter of computing this recovery of business for the water works and the stockyards is substantially the same. As to whether I regard the element of uncertainty as equal in each of those enterprises, I think there is more competition in the stockyards industry than in the water [fol. 589] works. In fact, the water works is a virtual monopoly where it exists, and there is no substitute for water. Under modern conditions it is practically impossible to live in a city without patronizing the water supply. In estimating water consumption, with respect to an existing plant and its extension, there is little to estimate other than the growth of the city where that water is to be consumed (T. 598). The basis of that is population, modified by a study of the uses of water in the community, and as they may be increased or decreased. We have average figures of communities of all sizes and conditions, but each city is a study in itself because the water consumption in various cities will vary anywhere from as low as 50 gallons per capita to an excess of 300 gallons per capita. There is no shipper so situated in the United States but what he could send his supply of livestock to another yard, if he was willing to sacrifice the advantage of coming to the St. Joseph stockyards. The advantage he would have

to sacrifice would be that which makes him come here now, which is what makes this a market, the advantages of outlets for his stuff, the advantages of railroad services, of freight rates, and in case of trucked in livestock the proximity to the market usually enables him to truck it here rather than freight in somewhere else (T. 599). The fact that he comes here is, I think, the answer to the question as to whether he would not have the same advantages if he sent the livestock elsewhere; that is, he considers there are advantages here or he would not come here. I do not mean that it takes no effort on the part of this yard to bring livestock receipts here, I mean that the fact that this yard is furnishing a service which is accepted by the shippers, indicates that the market is furnishing a service which satisfies the shipper better than, or has attractions to the shippers outweighing the attractions of others to which he [fol. 590] might go. If this yard was closed temporarily some of the shippers would simply be biding their time until they could come back and reclaim the advantages. Others would, in the meantime, have tested out some other yard and found that it also had some advantages, and they would be brought back with difficulty. They would recognize their own best interests, but some of our best interests are due to lack of testing other yards (T. 600). Other yards may have, during that time, if the shippers were diverted from this yard for a year, freight train schedules improved and trade routes established, which do not now exist, and which have some bearing upon the selection of these yards by the shippers.

I know some of the principal factors which cause a shipper to select one yard rather than another. Some of them are breadth of market, personal contacts with commission men, personal contacts with people in his own locality, whose views somewhat influence his own; solicitation for service and a demonstration of the service that is offered by the various stockyard companies; train connections, which will get the stock there with a minimum of shrink, and I have even heard experienced shippers argue about the water supply that the cattle and stock drink while it is in the yards. By breadth of market, I mean that a shipper consigning stock to a certain yard must be assured that there will be sufficient buyers there to insure his getting every cent the stock is worth on the day it reaches the

yards. By service rendered at the yards, I mean that promptly upon receipt the stock is unloaded, yarded, supplied with the desired feed and bedding, and the interest of the shipper watched until the property is transferred to the buyer. I regard both the market price and the service rendered as essential. (T. 601)

I have never attempted to express service in dollars so [fol. 591] I could not make the comparison as to whether the market price or the service rendered is the greater factor. The shipper raises livestock in order to realize dollars and cents and service has a bearing upon that as well. I know only in a general way the territory in which the freight rates are favorable to St. Joseph. I think all stock west of the Missouri can go to any Missouri Valley market at equal rates. That is, I can not tell where the break is or just how wide an area that covers, but as a general statement at least, I think that is true for remote shipments. I can not tell you how far west of the Missouri that is apt to be the fact. (T. 602.) I have not made an investigation of those features except just as I have picked it up from general inquiry. I have no very definite knowledge about the freight breaking point or which market has the advantage in those respects and I do not so testify.

I would not want to compare the service in the various yards and if I desired I could only do so very generally. It would throw no light in dollars and cents on service as between various yards. As to whether I know of any yards where the service is better than at St. Joseph, there are other yards that have better transportation service to the yards. That is, it is easier to get the stuff to the yards than at St. Joseph. I think that is true of the yards on the principal through transcontinental lines.

I am sure market price is a big factor in attracting livestock to a yard. I have not evaluated to determine whether it is the largest single factor but I know it is very important. (T. 603) As I understand it the market price is made between buyer and seller. The packers are one set of buyers and I think they play an important part in the making of market prices. I can not say whether the receipts at any stockyards may depend upon a comparison between the market price at that market and at the other [fol. 592] yards. Undoubtedly over a year the market price and also the breadth of the market have something

to do with the attractiveness of the market to the shippers. I did not make any investigation in detail as to all the outlets for the livestock. I assume that the packers and the other outlets now available would take all the receipts that the company could induce to come back to the yards. (T. 604) My computation assumed that the packing plants would cease operations. Referring to the statement on page 10 of respondent's Exhibit 8 that "stockyards facilities are so essential to the operation of the packing plants, that if the stockyards were not functioning for a construction period of one year, shipments now consigned to the St. Joseph stockyards would be consigned elsewhere and would, with considerable difficulty, be induced to again come to St. Joseph," that does not mean all shipments. It means all shipments during the period of construction. In other words that no livestock would come to the packing plants at St. Joseph during the period of reconstruction of the yards. There are two packing plants, one owned by Swift and the other by Armour and they are both in operation. (T. 605) They represent large investments and during this period of reconstruction they would be idle. For a considerable period after the new yard opened it would be operating at less than capacity. It would naturally be to their interest to reattract livestock to this yard and they could pay for that livestock whatever they desired in competition with other markets. I know of no rule of law that would prevent that. (T. 606.) If the packers should pay a bonus for shipments to St. Joseph upon the reopening of the yards, that would, I think, tend to speed up recovery of shipments. In my estimate of recovery of shipments I make no specific estimate that they would pay a bonus [fol. 593] but I arbitrarily shortened the recovery period of eight years given me by those most familiar with the situation, to the five years shown on respondent's Exhibit 8 on page 29.

What I said about my assumption that the commission men would be in favor of lower rates at the stockyards was directed primarily to stockyard charges and not to their own charges (T. 607). I think the reduction of rates at a stockyard would make little difference in receipts but what difference it would make would probably be to encourage receipts. I have not investigated that line and what I have said in regard thereto is pretty largely an offhand opinion. It was given in reply to inquiry by coun-

sel for the Government. I do not know what has been the effect of a reduction in the commission charges at the Omaha market.

My rebuilding period is one year. That is to say, the new plant would be entirely complete and ready for operation within one year and it would be a duplicate of the present plant. (T. 608) I am assuming that it would not be ready to receive any livestock until the end of the twelve months' period and that no livestock would come to St. Joseph until the stockyard was complete. That is not merely an assumption for the sake of illustration. I think that is a condition that would probably prevail if this reconstruction program were carried into execution. I do not think the packing plants would make any arrangements to handle receipts until the new yard was ready to operate. I think they would wait until they are able to get their stock through the usual channels, and without the necessity of making large expenditures on their own account, which would later be worthless. I think it would be more economical for them to let their plants lay idle than to construct some temporary pens and unloading chutes. That [fol. 594] conclusion is not reached as a result of any direct comparison of costs but simply a belief that the packing plants would not make any major expenditures which would be useful for one year only. (T. 609) My estimate is based on one year. As to whether the stockyards would be absolutely complete at that time, those who make the reproduction estimate would have to testify. I have assumed that there would be a lapse of one year in the operation. Possibly the stockyards could put up some pens and begin receiving livestock before the Exchange Building was complete but that would be at increased cost. Construction and operation in any industry or utility can not be carried on simultaneously without incurring added expenditures. If some cattle pens and unloading docks adjacent thereto were constructed along Packers Avenue, it would interfere with construction operations on the east side of the yards if those structures were not located so as to be part of the permanent plant. It would increase the construction cost as well. I have not made any estimate of the amount of such increase. (T. 610) I think it would be impossible to build sufficient temporary pens and sheds not to interfere with the business at all, and not incur expenditures in excess of the going value, and by that I mean expenditures

in construction, in operation, and wasted effort. I think it would be impossible to build part of the permanent pen structure and put it in operation before you had completed the whole. It might be possible to throw some of those in operation as a physical thing, but I have had considerable experience in construction work and in placing the utilities in operation and we endeavor to get them into operation as early as possible. We do know, as every contractor knows, that when you overlap construction and operation procedure, you involve cost, excess cost in both, and ac- [fol. 595] cordingly, in most efforts, I would say, in practically all efforts, not requiring over a year for construction, there is little incentive to put partially constructed works into operation. I know in a general way the layout of the St. Joseph Stockyards. I have been over it but I am not fully familiar with it from memory. I know that the packing plants are strung along the west side of the yard. (T. 611) If my recollection is correct the Belt Railroad completely girdles the yards and has some tracks on the east side and along the north end and also along the south end. The tracks at those two ends are slightly fa-ther away from the yards proper than along the east side. I do not recollect whether the sheep barns are in the north end of the stockyards. (T. 612.) The construction of a sheep division and the placing of it in operation while the hog division was being constructed would be prevented by the fact that the most economical procedure would probably not be to do it that way. If this proposal, involving an expenditure of several millions of dollars, is built and ready for operation in one year, it means carrying on construction intensively and concurrently over a wide area. It should be started in a logical, orderly procedure which would make the least interference to the progress of construction. That is, it must be worked out on a construction program, coming back to the original point of the execution of a construction program, it can not be the same order of procedure as an operating program and in so far as those two conflict, as they must, if they are carried on concurrently, increased cost will be incurred. The principal conflict between the operation of the sheep division and the construction of the hog division would be that of time. The sheep yards can not be simply rubbed into position by saying: "Here are sheep yards." It takes time to build them and during that time progress should also be made on hog yards.

[fol. 596] This doubling of concentration in a small section will not give you double the progress. (T. 613) It would take a reasonable construction period to create this property as a whole or one major part of it. I think it would take substantially the same time to create the sheep division as the whole yard, if you are going to keep your organization at a normal cost. You can only concentrate so much men and equipment and so much construction in a given area without increasing the cost. (T. 614) The facts that the yard is all laid out on a single deck and surrounded by a railroad so material may come from all directions would be favorable factors. However, this yard is not all on single deck. There are miles of pipe, water, sewer, and that kind of thing underground which have to be done and the trenches filled before paving and that kind of thing. I do not say that could not be completed in one section of the yards so as to permit paving to start before it was completed all over. I say that the logical construction procedure would be to carry all types of construction along in an orderly way rather than concentration of any one small area. It is sometimes true that business property will be in operation before construction is complete, quite frequently true in relatively long construction periods,—very rarely true in periods of less than one year. (T. 615) Under the conditions here at St. Joseph with a one-year construction period I think one would be money ahead to lose all of the business of the yards rather than put part of it in operation before it was fully complete. That is based upon my experience of a good many years in various types of construction.

The figures used in the various tables in respondent's Exhibit 8 are based on figures taken directly from respondent's books. That does not include figures as to rate [fol. 597] of recovery of receipts but does include the income and operating expenses resulting from that recovery. (T. 616) The estimated receipts of the St. Joseph Stockyards are taken from respondent's books. Those for the so-called starting or comparative plant are not so taken. I do not mean that respondent's books now show what its livestock receipts are going to be in 1930. Its books show what the receipts have been from 1893 to date and from that I have estimated the figure for 1930. The esti-

mated receipts for respondent for future years is not shown in any table in respondent's Exhibit 8 but is shown diagrammatically on exhibit drawing No. 1, being page 29 of respondent's Exhibit 8, the horizontal line labeled "Average Receipts, present yards." That is equivalent to carloads, being carload receipts, plus trucked-in stock expressed as equivalent. (T. 617) That diagram shows, for illustration, that in the year 1925 about the equivalent of 55,000 cars of livestock came to the St. Joseph Stockyards. I do not think that figure includes livestock merely stopped for feed, water, and rest and which did not pay any yardage, but I can not state that definitely. This diagram indicates that there was a decline in receipts until the year 1927 when they had gotten down to 50,000 cars, and then they increased until the year 1928 when they were nearly 55,000 cars. That 55,000 cars, being the numerical average of the past five years, only four of which show on this diagram, I have used it as the basis of the computation. (T. 618) I have assumed from my study of the history of past receipts that the future receipts will be on a level, neither increasing nor decreasing until the year 1937. I have assumed that the average receipts of the present yards for the future period, covered by this computation, will average 54,275 cars per year. In so far as the computation is concerned my estimate does not go further than 1934. (T. 619)

[fol. 598] Respondent's livestock receipts, expressed in carload equivalents, have been as follows:

1921	50,950
1922	55,144
1923	62,828
1924	60,116
1925	55,000
1926	52,535
1927	49,640
1928	54,088

My conclusion is based on the assumption of an average of 54,275 cars over the 5-year future period (T. 620), but I did not undertake to determine for any particular year. I am stating what a study of the past would indicate as the average for a 5-year future period. So long as it averaged 54,275, no amount of fluctuation of any particular year would materially affect my computation, but if the 5-year

average were changed, it would affect my whole computation in proportion as the two figures vary (T. 621).

I have estimated that it would take the comparative plant approximately 5 years, if it was built, to recover the business which, at that time, would be enjoyed by respondent, if its continuity were not broken. If that period were reduced to three years, it would reduce the going value quite materially, though I made no computation to ascertain the amount (T. 622). Accuracy in estimating the final year, when the receipts of the two plants met, has a bearing of course in my theory. Table 3, page 37, of Respondent's Exhibit 8 shows that at the end of the first year, after the completion of construction, the going value has amounted to $431,891 out of a total of $666,666. In other words, by the end of the first year, after the beginning of operations 65% of the total going value has been incurred. If the entire period were shortened, every figure in table 3 would be [fol. 599] changed to some extent. The first figure, $155,528, would be unchanged if two years were lopped off the entire period. That is the loss in the year of construction. The 4th instead of the 6th figure would become the last, and the 97% of the going value, which occurs in the first four years of the six, that is in the first three years of recovery, would be changed to 100%, if the period were shortened two years (T. 623). The figure $644,802 would not be the final going value if the entire period were shortened by two years. There would be an accumulative change in the figures, and the final figure would be somewhat less than $644,802, though I cannot tell how much less without recomputing it.

After having made computations of this nature and they have been tested by time, I check up to determine how nearly accurate my original estimate was made, and I have had some very interesting experiences in that regard (T. 624).

I have had some very close checks indeed, and one that we followed through very closely, in 1906 or 1907, just prior to my connection with the office. Work was in progress when I was there, in fact, this report was made after I came. We were employed by the United States Steel Co. to lay out for them the town of Gary, Ind., including its water supply and sewage and municipal improvements. We were given a construction program as to when the mills, different mills would go into operation and based on

that, practically a forecasted population, we knew that we could get a certain amount of water from the sand around Gary enough to supply 10 or 15 thousand people. We knew we could not supply 100,000.

We accordingly reported to the steel company, recommending the construction at once, or outlining the construction at once, of a 6-foot tunnel, three miles out into the lake, although we told them we would not pay for same, [fol. 600] but we recommended their recognizing at that time a going value, or a lag in earnings on that investment, as it was at that time of about $150,000. In other words, instead of that tunnel costing a specific amount, they should provide that amount which was its estimated physical cost, plus $150,000, and that would be put out at interest. That was done, the tunnel was constructed, and 10 years later, in 1917, we appraised that property for the Gary Heat, Light & Water Co. and estimated the amount of going value by this same method outlined in Exhibit 8, and after that was done, the steel company auditors made a study to see how that checked. The figures, as actually computed or taken from their books and the agreement was very close. (T. 625). It is my recollection it was within $5,000 or so, very close. We have chances to check back in connection with many utility construction programs, and we advise our clients as to the necessity of providing for the cost of developing the business of new undertakings.

At the time I prognosticated the future need for water at Gary, the steel company had told us that they were designing for 100,000 people ultimately. It would require about a certain number of mills, those mills would go into operation at such and such dates, and as it actually worked out, it did not vary so much from that. I think in 1907, when we appraised it, Gary had probably 85,000 people. Gary had a very much more definite future than ordinary cities at their inception. As to whether it had a more definite future than stockyards, we are looking at the stockyards now in a reproduction, not as a new production, and we have a 40-year backsight here now. I thing that gives a very good idea as to what the stockyard business can be developed to in this locality (T. 626), so I think it is even more definite than an industrial city not yet started.

[fol. 601] I studied the record of how the stockyard receipts grew at St. Joseph, that is, just a statement of their

receipts from year to year. I have talked with men who are old in experience around the yards. I think a number of factors had something to do with the growth of the yards. I think that providing a market, taking over of railroad facilities by allied interests, active solicitation of the management, the character of service rendered, and the fact that an outlet was developed for such shipments as came to the yards were factors which had something to do with the growth of the yards. I think the yard started about 1893. At that time the livestock development in the territory west of the Missouri River was not so much small farms as it is now, although I am not speaking from experience as I was never west of the Mississippi River prior to 1893 (T. 627).

If I had made my computation in 1928, I think my average for the receipts would have been very close to the average I have now stated. That would be true of 1927, and I think of any period during the past 25 years. I would have taken certainly within 5,000 cars of the same amount and I think much closer than that. That means that receipts have practically been stationary for over 25 years.

I have checked back over one of my stockyard prognostications to see how experience had dealt with it. I found that in the case of the St. Paul yards the growth had been slightly less rapidly, I think, than I had forecast it, due to the outside buying which has come to be a factor in the four or five years since that forecast was made. I did not know at that time how outside buying was going to grow. I have not checked that recently, but I platted those points on my curve, which appears in that case as Exhibit 4, and I now find that the cars of stock receipts checked my estimate much closer [fol. 602] than I thought (T. 629). I have before me Respondent's Exhibit 122 in the St. Paul case entitled, "A brief description of going value, the comparative method, and its computation, and the detailed application of this method of the reproduction cost of property of the South St. Paul Stockyards, October 13, 1924," though I do not recall it by number. I am referring to Exhibit 4 labeled, "Total cost—stock received at South St. Paul Union Stockyards." I find that there has been a slight difference both above and below my forecast. That forecast was made in 1923. Since that time three years have been above my forecast and two below. In table 4 I forecast the number of cars for each

year at the existing yard. In 1924 the estimate was 72,000 cars, and there were approximately 82,000. The estimated figure should have included drive-ins and truck-ins all reduced to carlot equivalents. That was four years ago, and I cannot state definitely whether it did or not. At that time St. Paul only had a small percentage of drive-ins, which since have increased very materially (T. 630). The number of cars which actually came to the St. Paul yard in 1924 was approximately 82,000. I procured that figure from the annual report of that stockyard. In 1925 it was 90,000 cars against an estimate of 79,500. In 1926 the actual number of cars was about 96,000, and the estimated receipts 82,000; and in 1927 as near as I can read the platting, about 83,500, as compared to my forecast of 84,500. In 1928 the actual receipts were 80,000 cars, as compared with my estimate of 87,000. I haven't the figures of actual receipts for the year 1929 (T. 631). I do not think those variations are material. If they are platted up on the same diagram as Exhibit 4, it is a remarkable check. I think the figures of actual receipts at St. Paul for 1924 of 77,918 cars, 1925, 84,404 cars, 1926, 88,279 cars, 1927, 74,357 cars and 1928 68,560 cars, stated by counsel for the Government, are [fol. 603] undoubtedly exclusive of drive-ins, but I think even those figures are close to my forecast. There is one year right on the forecast, two above, and two below.

I find on checking that the average of the 5 years since 1923, as forecasted by me in that hearing, was 82,000 cars per year, the figures which you just read to me, which I think are carloads exclusive of truck-ins, average over the same period 78,700 cars; the average (T. 632) of the figures taken from the plattings which I made some months ago in St. Paul on Exhibit 4 which, if my recollection serves me correctly, include drive-ins expressed as cars, the average for that 5-year period is 86,100. In other words, my forecast is almost exactly an arithmetical mean of this figure, including the truck-ins, and this figure excluding the truck-ins.

In the foregoing computation I am assuming that the figures stated by counsel for the Government are exclusive of truck-ins and my figures exclusive thereof, but I should like to check that as it is from memory. If it should be that counsel's figures include truck-ins, I would regard it as close to my estimate, for it would be within about 4%,

and that difference would only slightly reduce the amount of going concern value that I estimated; and if the figures that were given to me at St. Paul as the actual receipts are correct, the going value would be increased by almost exactly the same amount as the figures stated by counsel would decrease it.

In the St. Paul report there is not any table giving the estimate of livestock receipts in head rather than in cars (T. 633). Exhibits 1, 2, and 3 in that report show an estimate in head diagrammatically. For 1925 I estimated apparently about 5½ million head of all species of livestock. I do not know how many were actually received that year. I was interested only in carloads. I have never checked [fol. 604] the number of head because the computations are all based on carloads (T. 634). My estimate of the total number of head of livestock at St. Paul for the year 1926 was approximately 5,700,000 head; 1927, approximately 5,850,000 head; 1928, approximately 6,000,000 head. The average disagreement over that 4-year period between those figures and figures read by counsel for the Government from Government Exhibit 13-A is 4½%. I would say, however, that those curves and these figures are nowhere used in my computation, which is based wholly on cars (T. 636).

My computation shows for itself that it is based on cars and not head. That is not because yardage is collected on a car basis. It is because a study of the income from yardage shows very little fluctuation from year to year, substantially a level line, and is taken as the one unit, which apparently, based upon an operating record, is most uniform. By income I mean gross receipts from yardage and feed.

Speaking from memory I used in reducing drive-ins and truck-ins to carload equivalents 25 for cattle, 70 for calves, 70 for hogs and 125 for sheep. I do not remember whether the same figures were used at St. Paul (T. 638). I obtained an average gross income average net operating income per car and worked those averages rather than the actual head figures. These computations of receipts of livestock are merely for the purpose of leading up to net operating income. In other words, the things I really want to compare and limit comparison to the existing yard and the comparative yard, is the per cent of their net operating income for

the various years in the future. Turning to Table 7 of my St. Paul report the second column—net income of existing plants, refers to the St. Paul Stockyards. I have not compared those figures with the actual results at St. Paul. I would not have reason to doubt the accuracy of reports [fol. 605] made to the Department of Agriculture by the St. Paul Union Stockyards in compliance with the Packers and Stockyards Act (T. 639) but as to the items which they cover, I do not know about that. The last line on page 15 of the paper entitled "Annual Report of the St. Paul Union Stockyards Company, South St. Paul, Minnesota, for the year ending December 31, 1928," says "Total income carried to page 10, $2,264,414.99". I think that is the total income but it is not comparable to the figures referred to in Table 7 of my St. Paul report. In my St. Paul report I took the income from all sources, and as compared to this $2,264,414.99, I find, by reference to a table in that report, that I had estimated $2,200,000 for that, so the difference of $44,000 on $2,264,000 is an agreement within 2% (T. 640). As nearly as can be read from the diagram, Exhibit 6, in my St. Paul report, the estimated gross income figure comparable to the $2,264,414.99 is $2,450,000. The table on page 21 of the St. Paul annual report for 1928 includes an item of expense excluded from my table, being depreciation of $148,846.81, and totals $1,637,796.31. Deducting the $148,746.81 leaves a figure of $1,489,050 as compared to mine as shown on Exhibit 6 of the St. Paul report as nearly as I can read from scaling, $1,490,000. The net operating income I estimated for St. Paul Union Stockyards for the year 1928 was approximately $958,000. I think that was before depreciation. If my recollection is correct, the depreciation on the two properties was deducted in neither case. In the St. Paul computation I estimated for the comparative plant there a net operating income of approximately $823,000. As shown on pages 10 and 21 of the St. Paul annual report for 1928 the net operating income is $775,364.00 (T. 641). That is before depreciation and is comparable with my figures.

[fol. 606] I make no distinction between going concern value and going value (T. 642). To my mind a going concern is a property which has gone through the construction stage, and has developed not only a capacity to earn but earnings. By earnings I mean net income, although the go-

ing plant may have going value and as yet, no net income. I mean that if the plant were neither making a net income or suffering a net loss it might have a going value and I also mean that the property which is built and just ready to start operations, if it is going to perform a real service, has a going value. Even though, at that moment, it might not have a remunerative income. I also mean a property in the condition that many utilities were in at the end of the war, when some of them actually operated in the red, still had going value. The comparative plant would have some increment of going value from the time it was finished because it would be that much closer to the time that it would have a remunerative (T. 643) income. By remunerative income I mean it would show net profits and the closer it gets to that condition the more going value it has. Even if it never acquired a remunerative business, if it is furnishing a service which is needed, the theory of the utility regulation is that it will be allowed to earn commensurate with the cost of service and the cost of performing that service, so that although at any particular moment or over a considerable period, such as I illustrated in the Lexington Water Case, a utility may have insufficient earnings, or no earnings, and yet have a going value, because it has earning capacity. That is not because the law will allow it to earn a fair return but because the community wants the service and is willing to pay for it. I know of instances that have no going value, or a negative going value. I could cite many of them, but they are the exception, rather than the rule, [fol. 607] and my point is that the earnings at the particular moment, do not, to my mind, measure the value of the business (T. 644). I mean that a business that has no net earnings, would have a going value and be a going concern. A plant that had consistently demonstrated its inability to make net earnings, and I assume that it could never make them, and I assume and am satisfied that it could never make them, such as a logging railroad, with the logs cut off, and decline or abandonment facing it, would in my mind have a negative going value and the total property value would be worth less than the cost of physical reproduction. In such a case the total property value would be approaching, or possibly scrap value. I would call such a railroad a dead concern or approaching it because it had served the usefulness for which it was built and the property would

be required to go through a great many lean years before another use would be sufficient to justify its operations. If it never had another use it would have a negative going value (T. 645). In the case of an interurban electric road running out of a city and serving suburban communities which over a period of years had become a demonstrated money loser the element of going value would depend entirely on the conditions. I know right now two or three lines that have been in that status for years and today are in fine shape, such as the North Shore Electric from Chicago to Milwaukee, or the marked improvement in the South Shore Line from Chicago to South Bend. It is not the status at the particular moment, it is its capacity for earning even more than the present earnings, but it is either its present or future capacity for earning that determines whether it is a going concern or one that is not going. Upon that, however, depends whether the concern is a successful going concern and has a going value or going concern value (T. 646). A going concern or a concern which has going [fol. 608] value, to my mind, means a business which has an earning capacity and is meeting a need in the community better than it can be met otherwise. By earning capacity I mean a capacity for eventual net earnings. Ordinarily I use going concern and a concern having going value as synonomous terms (T. 647).

In response to a request by counsel for the Government for comparable figures so as to contrast or compare the actual receipts at the South St. Paul Stockyards with those which witness had estimated, witness stated the following: "I have made no additional check of the carload receipts since yesterday. At that time, there was put into the record my estimate that is in the St. Paul Exhibit of the carload receipts for each of the five years, from 1925 to 1930. There was also put into the record a statement of carloads which were actually received, those figures being supplied by you, and I also put into the record taken from data platted some six months ago by me on one of my St. Paul Exhibits, the equivalent carloads which have actually been received, including truck-ins for the same five years. I have not checked those figures since yesterday. I have, however, checked the actual head received at St. Paul, as compared to my estimate of receipts at St. Paul for the three years 1926, 1927 and 1928, the annual reports for the

St. Paul Union Stockyards Company, covering these years being supplied to me by you. I find that the total head figures which you gave me yesterday (T. 648) substantially check for the years 1926 and 1927, except that I find 10,000 additional head in each year, which I think is probably an arithmetical error of 10,000 head per year. However, I find that for 1928, the figure which you gave me is 812,000 head below that given in the 1928 Annual Report of the company, so that the total head receipts actually received at the yards [fol. 609] at St. Paul for the four years, that is to say, 1925 to 1928, inclusive, instead of being 23,050,000, as I estimated in my Exhibit, would be 22,658,000 head. I think I can clear that up by adding this total covers the four years from 1925 to 1928, inclusive, the figures for only three of which, however, have I been able to check, as I have had the annual reports only for the years 1926, 1927 and 1928. This difference of 392,000 head amounts to approximately 1.7% of the total receipts during that period."

By referring to the Public Annual Livestock Report of the St. Paul Union Stockyards Company for the year 1928 I find that the number of livestock receipts shown in that report for that year is 5,823,894 head (T. 649). That would make some slight difference in my total. The total difference between my estimate and the actual receipts, instead of being 392,000, as previously stated, would be 386,000, in round numbers. Reading from the same report the total head of livestock received at St. Paul for the following years is as follows: 1924, 5,554,180; 1926, 6,143,643; 1927, 5,402,811; 1928, 5,294,488. Those figures include what is known as through shipments (T. 650). The number of head involved in those through shipments were for the year 1926, 268,220; 1927, 172,927; and 1928, 341,949. The figures read from the Annual Report of the So. St. Paul stockyards for 1928 include through shipments. I do not know whether such shipments pay any yardage. I may have known at the time I made my estimate on St. Paul but my computation assumes that there would be the same percentage of through shipments with the starting yards and with the going yards, in which case it would not make any difference whether or not they paid yardage. In my total items at St. Paul I included all shipments. I think I included through shipments throughout and I made no separation at St. Joseph (T. 651), but my opinion is that the

[fol. 610] inclusion of these through shipments would not change my ultimate result because we are comparing two properties having the same type of business, and the same distribution of business, that is, business that we are recovering is identically the business that is now here. Therefore, the per cent of the two on the same basis would give us the same answer. We would be recovering a business that did not pay any yardage as well as that which did and that is reflected in an average revenue per car, both of the going yards and of the starting yards. It does make a difference what figure is assumed for the receipts of the going yards because the receipts that are here have to be recovered. The difference in this computation is a recovery of revenue and it is a recovery of revenue under the same conditions of classification of receipts that produce that revenue in the going plant as in the starting plant. In other words, at St. Paul, as I recall it, I used an income per car of all classes of, I think, $28. Now, had I excluded from that the through shipments, the $28 would have been a different figure and it would have been a different figure as applied both to the going plant and the starting plant, and the net result would have been, I think, the same (T. 652). Whenever for any reason I change my figures as expressed per car as to the operating plant they automatically change as to the starting plant so it wouldn't make any difference what unit figure per car I used, the result would be the same (T. 653).

In response to request of counsel for the Government for a comparison of witness' estimated net operating income and the actual net operating income of the South St. Paul Stockyards for the years 1926, 1927 and 1928, witness said the following: "In 1926 the net revenue, as estimated in my St. Paul report, was $902,000; the actual, after [fol. 611] making corrections for some interest and depreciation items, was $1,053,549, a difference of $151,549, being an under-estimate of my figures, that is, my figures being an under-estimate of the actual for that year. In 1927 my estimate of the net was $929,500; the actual net, with the same corrections for interest and depreciation was $890,710, an under-estimate on my part of $38,790. In 1928 my estimate was $957,000; the actual, with the same corrections, was $858,899, an over-estimate on my part of $98,101. For the three years the net under-estimate was

$14,658, or 0.46 of 1% and as I stated yesterday and as the St. Paul report, itself, states, 'it is not an effort to estimate any particular year, but rather an estimate of averages', both in St. Paul, and as I testified yesterday, here in St. Joe" (T. 654).

I don't attempt to say what the difference would be in each particular year but I have attempted to estimate what the average would be over the period covered by my recovery of revenue forecast. Based upon those averages an average condition as specifically stated in the report I had actually stated down to the very dollar the going concern value for each particular year. The going concern value I reached is an accumulation of those annual figures. Comparing them with the actual figures I find that some of the actual figures are above and some below my estimate. We all know that livestock production moves in cycles.

Assuming that the present St. Joseph Stockyards had gone out of business and in the present year, 1929, a new yard was being built and the Secretary of Agriculture was holding a hearing to determine the rates to be charged by that yard when it began business in January 1, 1930 (T. 655), and I was testifying in such a proceeding as to going concern value I would compute it just as I do when I advise investors, or prospective investors, who are going to con- [fol. 612] struct other utilities. I would estimate the cost of physically reproducing existing structures, and make a study of the effort, and expenditures, and time that would be necessary to finance that structure into a remunerative business, and make a going value computation exactly comparable to that herein made. I would then place a total value on the property which would include the physical cost of reproduction plus the amount computed for going value, which would be computed in exactly the same manner as I have done here (T. 656), and the result would be exactly the same.

In my calculation here I have used the net income of the existing yard as it is before depreciation. It would be 4½% if 4% were allowed for annual depreciation. I did not make the deduction. I took gross before depreciation as I am not testifying on depreciation. 8½% happens to be the present gross figures based on the total valuation on which my computation is based. For the new yards in the assumption which counsel has given I would use the same

8½% before depreciation if that were the past history of the yards (T. 657) and if the proceeding in question were not instituted by the company as an application for an increase in rates to a fair return. In such instances I would use the rate as I found it. In a case involving an application for an increased rate I think going value ought to be computed upon a fair rate of return rather than the present return. In the illustration which counsel gave I would find for this new yard approximately the $667,000 which I have found in my report. That is what I would advise a client, a prospective purchaser, as the amount which he could pay and break even. In other words I would advise him that is what it would cost him to finance into an income equivalent to what the old yard had (T. 658) and if the new yard were applying for a reasonable rate I would cal- [fol. 613] culate that up to a fair rate of return. I think that a going value computation based upon conditions, which are likely to change, ought to be based upon the future, rates which have to be earned in the future rather than in the past. What I mean is that the going value of this new yard which is being discussed would be the same as that of the old yard when the new yard has been constructed and financed to an income equal to that yards now existing (T. 659). Assuming that on January 1, 1930, the new yard is complete and ready to open for business and the Secretary of Agriculture were asked to fix a just and reasonable rate for it to operate under I would recommend that the Secretary of Agriculture allot it some going concern value. I think the rates necessarily being collected in the future he must take into consideration conditions of the future, and not being subject to adjustment every few days, I think that rates ought to be fixed at that time on a rate base which would include the physical cost plus the going value in that case just as I have in this proceeding (T. 660). As to whether the amount would be the same at that time, going value is an increment, but I think that rates ought to be set at that time which will be equitable over that period of time in which they are going to be collected, a period in the future, rather than being changed each year. At that time the new yard would not have incurred the full amount of going value which I have computed in this proceeding but in the course of the ensuing three or four years it would have incurred that amount.

Assuming that there never had been a stockyards at St. Joseph until the new yard under discussion was completed on January 1, 1930, and thereafter the five-year period had expired, so that we come to the year 1935 and my prediction has worked out just as I said it would, the yard having attracted the same amount of receipts and the same amount [fol. 614] of income during those five years which I am now predicting, so that the past history in 1935 is just as I have said it would be and I were called upon then to compute the going value of that yard I would compute it just as I have in this proceeding (T. 661). Under the assumption which I understand to mean that the forecast had been exactly realized in actual practice I would compute the going value by the same method and would come to the same conclusion. In both of the cases assumed by counsel one would be reproducing a business that is there. That is, it has been established in both cases. In one case it has been recently established and in the other (T. 662) it has been established over a period of years. The method would be identical, and I think the result would also be the same.

I stated that I had testified before the Interstate Commerce Commission as to this method of computing going concern value. I have not seen any of the Commission's opinions, but I think it is safe to say that they did not adopt my method. I have not seen the Commission's opinion in the Virginian Railway case and I don't know that my method was definitely turned down in that case, but I have seen other cases where it has been turned down by commissions and allowed by the courts. I know that the Interstate Commerce Commission turned down present-day prices and has since been reversed by the United States Supreme Court. I did not testify in the Virginian case. I don't know who did. I don't know whether there was anything (T. 663) presented for going value, or the theory upon which the computation was based.

Prior to making this computation of going value for the St. Joseph Stockyards I made one for the St. Joseph Belt Railroad, that was in October, 1926. I visited the stockyards prior to that report and ascertained the facts therein [fol. 615] stated and I re-visited the stockyards prior to my stockyards report. I think I ascertained my facts from the same people in each case and from the same sources, some of them published sources. It was a month or maybe

six weeks ago I visited the stockyards for the purpose of making my report which is Respondent's Exhibit No. 8. I was at the yards one day and I asked for (T. 664) and received other data that had been compiled for me by the company. My investigation at the yards did not consist only of talking to those people who told me about the probable recovery of receipts. It also consisted of taking figures from the company's books, and seeing that the data that had been requested was furnished, and a general familiarity with the yard operations, or renewing my prior familiarity. I only made a physical inspection of the yards and of its operations at that time in a general way. I had been over the yards and railroads and the physical structures in years previous. I know of two packers who operate at the yards. I don't know whether there are more, they are Armour & Swift. I think they buy livestock in the yards. When the livestock has been sold to the packers it is my understanding that it is put into holding pens. I do not know the extent of those pens (T. 665).

In my report I stated that I had interviewed four of the best-informed commission men at St. Joseph, but I am not personally acquainted with all the commission men there. As to how I know that the four I interviewed were four of the best-informed, I asked the company to let me interview individually four of the best-informed commission men whose clientele was most representative, or, taken jointly, would furnish a most representative report of the producers' area. Then the company produced these men whom I have described, and whom I had never seen before (T. 666). When we start the computation of going concern value [fol. 616] we don't know the amount of it. We do not know all other factors, the business to be recovered, the rate at which it is to be recovered, and all other factors of importance, so that everything is fixed except this one figure; that is still unknown. It is necessary, therefore, in arriving at a total, because interest is credited on unexpended balances, to assume some figure. Referring to Table 2, on page 36 of Respondent's Exhibit No. 8 (T. 667) the assumed going value enters into some of the numbered columns in that table. It is reflected in column 6, being the amount invested at 4%; that is, the part not yet drawn from the bank and put into either physical plant or going value increments, and is reflected in column 6, as you will note, by a decreas-

ing amount. It is also reflected in column 7, the amount withdrawn during the year. For instance, in the first year, we computed a going value of $155,528, which appears as amount withdrawn in column 7, as having been withdrawn prior to 1930, so that interest on those two, interests for average bank balances, the amount left in, in that year, is computed as incomes on unemployed capital, appearing in columns 8 and 9, the sum of which is carried forward into column 11. For instance, for the year 1930 deficit interest credited $22,048, appearing in column 11, which is added to the net income from operations appearing in column 2 of the same table, and produces column 12, or an amount of $116,058. In other words, the income of the plant for that year consists of income from operations, plus interest credits.

I consider that the man who has debated as to whether he would buy an old plant or build a new one has on hand this $5,040,000 shown in the table, and that $667,858 of that is what he has on hand to pay for the element of going concern value (T. 668). Until he builds a new plant, of [fol. 617] course, that amount of money remains idle, and he can invest it at 4%, which is shown in column 6. I decrease the $667,858 by the present worth of the excess income, appearing in the next to the last column of Table 3, on page 37, to get the $512,330. One hundred fifty-five thousand, five hundred twenty-eight dollars ($155,528) of that same figure appears in column 7 next adjoining, and is for the amount withdrawn during the year, on which he could earn an average bank balance of 2%. That is his going value increment for the year. It is something more than actual expenditures of getting business. It is the difference between his financial status of that year and what it would have been, had he bought a going property. It is more than going out and inducing shippers to come to a market. The man who starts to build this plant has been advised that he should elect to pay this amount, $667,000, more for the going plant than if the plant had to be built, and that if he (T. 669) elects to build a new plant, he must be willing, or he must be able, to charge himself from that $667,000, an amount each year which will represent the difference between the earnings from the plant that he is building and the earnings from the plant that he would buy. Now, the first year, that amounts, according to

this computation, to $155,000 and some odd. For the first year, he had the whole amount, $657,000, deposited in the bank, on which he could earn 4% during the year, and this has accumulated to the amount of $155,000. He draws that out of the bank, assuming a uniform rate of withdrawal, and, accordingly, from that part that is withdrawn from the bank, he gets 2% interest on his average bank balance, which amounts to 1% interest on the amount withdrawn, and on the part that is not withdrawn he still gets 4% for another year. In other words, he had to withdraw this $155,528 to make up for the difference in his two positions. [fol. 618] It is not the loss, the deficit; it is the difference in financial status. In other words, had he bought the plant, he could have, that year, had $155,000 more in his pocket than if he had built it, and he has to charge himself that amount. If he kept that amount in the bank, earning 4%, and just made this charge on his books, he would simply be fooling himself (T. 670). If he had his $155,000 more earnings in his other plant, he would have it available. If he has to make his status comparable, he should have it available here, but, as it is, he has to pull it out of the bank, and, in doing so, he sacrifices interest. He would have to have it available, not for expenditures, but to keep his own books level. He wants to find out what advantages, if any, he had in building his plant, instead of buying it. Now, he has to keep his finances and his book accounting the same, equal, or he is simply fooling himself. He could not leave it there in the bank, and continue to get this 4%, and then write it up on his books, as if he were getting the 2%, because he does not have this $155,000 until he takes it out of the bank. He has it in the case that he has earned it, and he has it to do what he wants to do with it. Now, there is one way that he can do it that is exactly comparable; that is, to pull it out of the bank, and put it in his pocket. If you credit the interest in one case, you must in the other, and you are just back where you started. As I see it, to do otherwise is not balancing the two conditions.

The rate of return used would materially affect the amount of going value (T. 671). The relationship is not that direct that doubling the rate of return would double the going value. I would qualify my former statement by saying that increasing the rate of return would increase the going value up to a point where a fair return is reached. It

the rate of return were halved, it would reduce the going [fol. 619] value. The going value which I assume does not automatically affect the going value which I finally compute. After I have decided the fundamental factors as to revenue, rate of recovery, physical plant, and those things from there on, it is just one calculation, and what you assume for going value has no bearing on its ultimate result. There can be only one correct answer produced in any fixed set of bases. It would not make any difference in the final result if I assumed a million dollars rather than $667,000, because that is just exactly what is done. The first calculation is run through on some round figure. Even though the first assumption has been extremely accurate, it is rarely the case (T. 672) that the computed going value checks with the assumed going value, which shows that the assumption was incorrect, and then the computation has to be made over again, assuming a new going value, which will bring it to a still different conclusion than the first computation, and by working it through a number of times the computed going value finally checks substantially with the assumed going value, and that is the only answer that can be secured from the same set of bases.

I base my going value on the stockyard company's figures as to plant valuation and expenses, and if the Secretary of Agriculture should find a different figure the going value would be subject to some adjustment.

Among methods of computing going value other than mine there is the one commonly known as the "past deficit" method. That is similar to the one sometimes called the "Wisconsin deficit method." There is a distinction, however, in that the Wisconsin method capitalizes deficit, whereas the straight past deficit method merely accumulates deficits below some rate of return (T. 673). Both of these methods puts the deficits directly into the rate bases. What [fol. 620] I refer to as the past deficit method puts the deficits in, where the Wisconsin method compounds, adding the deficit to the capital account each year, and then those two become the rate base for that year upon which fair return is computed and a new deficit determined, the new deficit in turn being added to the rate base of the year previous, plus new construction. Then, there is a method that is sometimes used based on such units, as dollars per consumer, which really is not a method. It is an approxi-

mation and, of course, there is the percentage which I think is also not a method, but simply a short cut for a method. The last one, I think, is taken from a study, showing all going value allowances, in cases showing a selection of similar properties. The former is usually inferred from a study of the history of the company being investigated, and the expenditures, time and effort that has been made, expressed in dollars per consumer or similar units (T. 674). The method last mentioned might either be a deficit theory, or it might be the application as applied to the reproduction, using the expenses of the past as a guide. I do not approve either of those methods. I think the Wisconsin deficit theory is an incorrect method. I think that the working out of the method, which finally resulted in its abandonment in its own State, is the reason, in that the past deficit compound method really places a bonus on poorly conceived, many times poorly operated properties. In other words, it leads to an answer in which the more a property loses, the more it is worth, which we all know is exactly contrary to fact; as to the conclusions to which it reaches, I think it disproves the theory. Incidentally, it is the past cost method, whereas I think the courts, in their recent decision, have very plainly shown that cost of reproduction is at least entitled to major consideration, and, so far as [fol. 621] I know, this method presented here is the only strictly cost of reproduction method, this method being exactly comparable in reproducing the business and the physical cost of reproduction as estimated by the engineers of reproducing the physical properties. I mean in respect to the method used (T. 675).

In this comparative method of mine, I have a different type of basis; I go on a different type of basis than the engineers did in determining the reproduction new cost of the physical property, but use the same method of computation.

I would characterize the past deficit method in the same manner as I have the Wisconsin method. My method is an entirely different process from the past deficit. It is the cost of reproduction method of evaluating the business. In other words, my method compares to the past deficit method in just exactly the same way that reproduction new of physical property compares to historical cost of physical property (T. 676).

I accelerate the rate of recovery of receipts from the seven years estimated by my informants, and the five years taken by me, to take a rate which was more rapid than the most rapid of any opinions I secured. It was done in the interest of conservatism. In other words, to resolve a doubt in favor of the people who paid the rate, the shippers. The facts are that page 29 of my exhibit shows that the fifth year there is a going concern value identical with the existing plant, so that there are four recovery years, instead of relying on the seven as a comparable figure. They told me that on the eighth year the comparative plant and the existing plant would be equal. That is plainly shown on page 33, in which you will note that the gross income of the comparative plant has but four steps in it, and in the fifth year, 1934, the two plants are identical.

[fol. 622] I have never had occasion to measure the good will of an existing property (T. 677). I have no ideas applicable to the measurement of good will, or the basis of measuring it. My method of measuring going value does not include good will. It is independent of it. As to how it excludes good will, in a monopolistic utility there is no good will. In the stockyards, I think there is a good will, in addition to going value. That good will manifests itself in shipments having been started, continuing to come in, in many cases, without solicitation, after having established the train connections (T. 678). The estimates of the recovery of the business I secured from the men interviewed are as follows:

The three stockyards men, Mr. Vant, Mr. Barkley, and Mr. Carroll, estimated that in the first year there would be recovered 80% of the shipments originating in Zone 1, 15% from Zone 2, and nothing from Zone 3, and that by the fifth year they would have 100% of the receipts in Zone 1, 80% of the receipts in Zone 2, 65% of the receipts in Zone 3, and that it would take eight years for the ultimate recovery of this business or its equivalent. Mr. Davis estimated that in the first year 80% of the business would be recovered from Zone 1, 20% from Zone 2, 10% from Zone 3, and that, by the fifth year, he would have recovered 100% of Zone 1, 75% of Zone 2, and 50% of Zone 3. That was his estimate of all of the existing business that (T. 679) would have to be recovered. The difference between that total and the present business would have to come from new business

and would require some time, and would require some additions, and he placed no limit on it. Mr. McKee estimated that 75% of the business from the first Zone would be recovered in the first year, 50% minus of the second Zone, 20% of the third Zone, and that, in the fifth year, 95% of [fol. 623] Zone 1, 75% of Zone 2, and 50% of Zone 3, would be recovered, and that the recovery of the remainder would take an additional time which he did not care to estimate, material time. Mr. Austin stated that, in his opinion, in the first year 60% of Zone 1 could be recovered, 40% of Zone 2, 25% of Zone 3, and that, by the fifth year, there would have been recovered 100% from Zone 1, 75 to 80% from Zone 2, and 75 to 80% from Zone 3; balance, if recovered, would be extended over some time in addition. Mr. Baker advised that, during the first year, in his opinion, 60% could be recovered from Zone 1, 50% from Zone 2, 10% from Zone 3, and that, by the fifth year, 90% of Zone 1, 75% of Zone 2, and 85% from Zone 3; the rest, if recovered at all, would be some years additional (T. 680).

I think all the expenses testified to by Mr. Burnell, that is, pre-organization expense (or the expense incurred prior to beginning construction) and financing expense, would not be reflected in the going value computation, because those two expenses, as I understand them and use them in appraisal work, are parts of capital accounts, which belong to the physical plant. When I make a cost of reproduction new of a physical plant, I include those two items as a part of the overheads. This is my general practice, and I consider that as a part of the cost of reproduction new of the physical plant, exclusive of land (T. 681). The reason I do not calculate going value on the reproduction new value, less depreciation, leaving the assumed going value out of the calculation, is because I am computing the going value of the property as a whole, including its business, and not just some physical structures. To leave out the assumed going value would be just the same principle as taking half of the physical plant, instead of all of it. In including the assumed going value, there is no compounding of going value. In fact, the going value as computed with certain [fol. 624] earnings on the total property, including the going value, as I have done, is less than it would be if computed on the physical plant alone, because of the interest credits which accrue to the starting plant on the going

value increments during the recovery period; that is, that makes the revenue of the starting plant greater by those interest amounts, and makes the going value smaller. In this computation, you will notice that the interest in columns 8 and 9, on page 36 of Respondent's Exhibit No. 8, amounts to a substantial item, and by that amount reduces the going value below what it would be to the physical plant alone, instead of total value (T. 682).

I stated that I thought the new stockyards should not be operated while in process of construction. I am familiar only by hearsay with the fire in the Kansas City stockyards which destroyed some 26 acres of pens. I do not know whether operations continued at that stockyard while those pens were being rebuilt, but rebuilding of pens is different from rebuilding stockyards because the building is simply the thing you see above ground, which must be preceded by the grading and laying of many miles of water and sewer pipes. I take it that the first floor paving, at least, did not burn at Kansas City. The estimate of the time necessary for the reconstruction of the St. Joseph Stockyards was made by others, not by me (T. 683). I do not know what they estimated as the time for laying sewers and water mains and the construction of pavements. I did not take that into consideration. I took into consideration the construction of these whole yards, with the same knowledge of the processes of construction involved, and of the interferences between operation and construction in new projects. I did not seek to ascertain whether the sewers and water and pavements would be finished in time to allow the erec- [fol. 625] tion of some pens and the receipt of some stock before the end of the year. I think that a year would be the minimum time, without carrying on both operations simultaneously. I do not know the method whereby the Denver Stockyards rebuilt its sheep yards without interruption of receipts. I think the type of construction where I got the most interference between operation and construction was work that I did during the War, when I supervised several cantonments, tried to combine the controlling of men with the construction program. While our most usual construction, of course (T. 684), is water works, we have abundant experience as to the costs and difficulties that arise, particularly from trying to operate before construction is completed. I am not familiar with the method

whereby the St. Joseph Stockyards continued in operation while reconstructing its unloading dock.

The statement on page 3 of Respondent's Exhibit No. 8 that what going value is should not be confused with the problem of how it should be measured, is a preface of what follows, and is intended to direct attention to the computation of going value, as being a reproduction or recreation process. That is, the going value is not a summarization of past deficits, but, as a reproduction process, is a means of recreating the business. The statement on page 4 of Respondent's Exhibit No. 8 that the original worth of going value in a property long since established had always to be created by cash expenditures, either directly to establish organization or indirectly to meet the difference existing between the fair earning power of the money invested and the amount actually earned in the early operations. This does not mean that at some beginning period of the St. Joseph Stockyards it lost the amount of money which I say these starting yards would lose. Those two figures have no inter-relation at all. It is simply a statement sub- [fol. 626] stantially that no property can be created (T. 685) and financed into an income without incurring losses. I think the facts would show that this St. Joseph Stockyards incurred cash expenditures and deficiencies below a fair rate of earning, very greatly in excess of the amount I have computed for the recreation of the business as of this date, and their going value development period instead of extending over four years, extended over a much longer period. I know that simply on inquiry. In practically every utility property where I have made a detailed investigation, that has been the case. Here I made inquiry only and was advised that that was the situation. When stockyards were first constructed they started small, with just a few pens and grew, and the business grew and there was not an idle investment doing no business throughout a period of years. But they incur these losses because they do not make a fair rate of return even on the smaller investments. They have to finance themselves into an income commensurate with the investment, and they both grow (T. 686). If their financial history shows that from the very beginning they made a fair rate of return, that would simply indicate that by the past deficit method they did pretty well here, and that if the past deficit method of

computing so-called going value had any standing, they would have a small going value. So far as recreating the business, it has no bearing any more than the fact that they bought the fence posts here in 1893 for $150.00 a thousand has any bearing upon the cost today. It is never true that a business does not incur any losses in its development. The amount may be in question but it is not possible to divert money from one source where it is earning revenue invested through a construction program and put it into another source without incurring costs outside of the physical expenditures. It just is not possible to do it. I do not [fol. 627] mean if one would take some money which had been invested at six per cent and put it into a new business, which took about a month to build, and that business would take with the public so well that 50 per cent would be made on that investment in the first year, one would have lost money, in the net result, but that is not the case in utilities, particularly in utilities subject to regulation, who are confronted with the prospects of being allowed to earn, if they can, a fair rate of return and no more (T. 687). The St. Joseph Stockyards was started many years before it was subject to regulation (T. 688).

As to why people who know from year to year just how much stockyard they will need to take care of their receipts, knowing approximately just how much receipts they are going to have each year for four years, need to tie up money by building a present plant big enough for four years hence, we are reproducing a property equal and equivalent to what is now here. We are doing this as a physical reproduction, and it seems to me that goes to physical reproduction rather than to the going value. I do not mean that that is a part of my general assumption, and in actual practice it would not be necessary to tie up that amount of money. Anyone who has been through many construction undertakings, I think, would desire to build this quickly and all at once, and I am not making that statement as an expert in stockyard construction. I didn't intend it so, but I think it would be impracticable to build a certain percentage of the sheep yards and a certain percentage of the hog yards and a certain percentage of cattle yards and a certain percentage of underground structure this year and some more next year and spread it out over 4 or 5 years. We all

know that piecemeal construction, particularly where it is done under contract and as it is in that case necessary interference between construction and operation would cost more than building it as a unit (T. 689). Such piecemeal [fol. 628] construction is not a reproduction new of the existing property, as is contemplated in a valuation case, nor is it an index of the present value of the existing property (T. 690).

With reference to a statement in the first paragraph on page 5 of Respondent's Exhibit No. 8, "Inasmuch as all present values are inherently created by future human needs, the use of this analysis of recreation cost, as a proper measure of value, must depend entirely on the assumption that the property, whose reproduction we are considering, will be fully needed in its present condition by the public of the future." A permanent and steady decline of the receipts of a stockyard would reduce its going concern value. That is what I mean by the statement in that paragraph, comparable to the logging railroad illustration that I have given. With reference to the paragraph marked 6th on page 15 of Respondent's Exhibit No. 8, we are dealing here with the value of a stationary business. I would compute the going value of a receding business in the same manner and if it were receding fast enough, as I stated yesterday, it would mean that it had an ultimate lack of service value or usefulness, the going value would switch over to negative (T. 691). The statement of page 16 on Respondent's Exhibit No. 8 that "When those two statements are complete the net results may be compared, and it will usually be found that the existing or going plant has a net financial advantage and the net difference thus found is the measure of this advantage and is the going value sought," does not mean that the going value is measured by the amount of net earnings of the existing plant. It means that it is the difference between the earnings from all sources of the going plant and the earnings from all sources of the starting or comparative plant, beginning with the date of beginning of construction and end- [fol. 629] ing with the complete recovery of revenue. I refer now to net income.

If it be a fact that were the St. Joseph Stockyards suspended, a new plant could never recover the receipts, that would not affect going value of the St. Joseph Stockyards

at all, because we are valuing the stockyards that is here and not another plant which would never be here (T. 692). The difficulty of attracting the receipts has a bearing on going value, but I do not think we can value a property fairly by wiping out from it all the conditions surrounding it at the time of valuation. I think that is a confiscatory assumption. Now, let me add to that and if it does not answer it you can strike it or whatever you want to do with it. The reproduction of the business to my mind is exactly comparable to the reproduction of the physical property and the unit bases are the same. For instance, we reproduce the physical property in Chicago using one and one-half dollars for labor in days where it is more difficult and costly; we reproduce it out in the country using 75 cents for that same labor. Now, the cost of reproduction in Chicago (T. 693) is therefore higher than it is the country for physical structure and the cost of reproduction is whatever we find it on physical structure. The same thing is true with the cost of reproducing a business. If you can reproduce a business easily the going value is less. If it is a difficult business to reproduce, the going value is correspondingly greater. It is worth more to the owner of the business if he gets it, and if the cost of reproduction is a measure it applies equally to labor or brick or business, as I see it.

If it be assumed that the business of the existing stockyard is of such a character that an intending purchaser could not attract that business, or any of it, to another stockyard which he might build, his conclusion would be that he had better buy the going value with the existing [fol. 630] yard. If he were my client, he would arrive at what was a fair price to pay for the going value of the existing yard in just the way that I have arrived at it here. That is what they have done in numerous purchase cases. In other words, I would have this suppositious plant to use as a measure; that is the way I would get at it in advising him, and would say that the receipts of the suppositious plant could never grow; therefore you had better not build it, but you had better buy the other one. But I would not say that the measure of the going value of the existing plant is the difference between its income and no income at all (T. 696). That is, I don't think it is the difference between no income and the present income. That is what I under-

stood the last of your question to be. No, I think it is,—the real question is that my client would ask me first of all, "What can I afford to pay to get into the stockyards business in St. Joseph, and should I buy the existing yards, and if so, how much can I pay for them, including any business, or should I build?" I would come to the conclusion that if he were to build a yards, the probability would be that neither he nor the existing yards could make any money, and the business already developed by the existing yards would be worth something to him, and that he had better not go into the stockyards business, or that he had better, and I would so advise buying the existing stockyards at its physical cost of reproduction plus a fair going value. I would ascertain the amount of that fair going value by this same method, by comparing it with a suppositious yard which I already knew could never attract any business. That is what I do in every water works. There are only three or four competitive water works in the country, and none of them, to my knowledge, successful, and yet water works purchasers pay good money for going value based on exactly this computation right along (T. 697). [fol. 631] I am not bringing in the element of competition as affecting my idea of what going value is worth. In my report, which is Respondent's Exhibit No. 8, I leave out the element of competition entirely, as I do in all of these computations.

Redirect examination:

Repairing a certain pen area is not comparable to the situation before us of determining the value of the St. Joseph Stockyards property, because here we are confronted with the reproduction of an entire property, above and below ground, in the least practicable time, in order to keep down overhead and interest costs and to secure the greatest economy in construction. That is an entirely different process from (T. 698) rebuilding some pens or divisions or similar work. An established business with just a part of its structures wiped out is not equivalent to a reproduction new of the entire business, physical structures plus the business. In this case the immediate problem is to reproduce the entire structures, including the assembled business. Just as in the reproduction new of the physical property one must start from the beginning without the as-

sembled physical structures, I must start from the beginning without the assembled business. The processes are comparable.

The cut and try method is commonly used in mathematics. There are many types of problems that can best be solved by that method. It is nothing new in the science of mathematics.

[fol. 632] Depreciation Reserve

JAMES A. COUNCILOR, a witness, called by Respondent, after being sworn, testified in substance as follows:

I reside in Washington, D. C., and am a member of the firm of Councilor and Buchanan (T. 700), public accountants specializing in Federal tax work, in addition to the usual work of public accounting offices. It maintains offices in Washington and New York. I graduated in 1914 from the Washington School of Accountancy. Since then I have received a C. P. A. degree from the States of Virginia and New York. Following 1914, for four years my work was of a miscellaneous character. In 1917 I was employed by the United States Bureau of Efficiency as a member of its staff, and for about 2 years was engaged in the designing and installation of accounting systems in various government offices. Late in 1918 I entered the United States Bureau of Internal Revenue, where I worked in various divisions until the fall of 1919, when I took charge of what was known as the Consolidated Returns Division. The work of that Division was the examination of accounts and tax returns of what is known as affiliated groups of corporations. These groups consist of companies, the stock of which is so held, either by individuals or by other companies, that a number of companies are thrown into a single group (T. 701). That division probably in [fol. 633] cluded most of the largest industrial concerns and public utility concerns in the country. I resigned from that position at the end of January, 1921, and opened my own office, and have been practicing on my own account since that time. As head of the Consolidated Returns Division, I had an opportunity to become familiar with the accounting methods followed by the stockyards whose reports for internal revenue purposes were made to that division, and the manner in which depreciation was handled.

Some of the concerns whose business I have handled, and with whose accounts I am more or less familiar are as follows: Gannett Publishing Company, Portland, Maine; Howes Brothers Company and affiliated organizations of Boston; Leather Commission Merchants, National Leather Company and affiliated companies of Boston; Leather Tanners, Hood Rubber Company, Boston; American Book Company, New York City; Remington-Arms Company, New York City; Merchants Banking and Trust Company, Washington; Washington Railway and Electric Company, a public utility of Washington, D. C.; Florida Power Company; Columbia (T. 702) Gas and Electric Company, New York City; Cincinnati Gas and Electric Company of Cincinnati; Cincinnati, Newport and Covington Light and Traction Company; United Carbon Company; Swift and Company; Libby, McNeil and Libby; St. Paul Union Stockyards; Sioux City Stockyards Company; American Toll Bridge Company of San Francisco. My relations with these clients were such as to give me information as to general accounting methods, including depreciation.

I am a member of the District of Columbia Institute of Certified Public Accountants, the American Society of Certified Public Accountants, and the New York State Society of Certified Public Accountants. I have been president of [fol. 634] the District of Columbia Institute of Certified Public Accountants, and also president of the American Society of Certified Public Accountants (T. 703). I think I am familiar with the accounting authorities, that is people who have written text books and are considered as authorities on public accounting. The purpose and operation of depreciation reserve and funds are as follows: Depreciation reserve is what is sometimes known as a valuation account. It is set up in the accounts of a business to reflect the accrued depreciation upon its property. In the early stages of the development of the science of accounting, it was usual to write off the depreciation as it accrued directly from the base value of the assets, that is to say, if the asset cost $1,000, and it was determined that depreciation in this accounting period was $100, that $100 would be credited directly to the asset account and at the same time, charged to expenses, thus leaving the asset account at a figure of $900. There were various reasons which made that undesirable and it shortly came to be the custom to set

that amount up in an account on the other side of the balance sheet, so that the books would continue to reflect the cost of the asset on the one side, with the offsetting depreciation reserve on the other. The reserve, as it is accumulated in this way, is subject to later charges on account of property that has to be retired. The expression "reserve fund" is applied to an account which appears on the asset side of the balance sheet. It is an account which is met comparatively seldom, but (T. 704) reflects amounts of funds or securities which have been specifically set aside to take care of some purpose, or for the purpose for which the reserve appears on the other side of the balance sheet. The purpose of the depreciation account is to reflect the accrued depreciation existing in the property. Let us assume that we have an asset costing $1,000, and during [fol. 635] the first accounting period we computed accrued depreciation at $100. We charge our operations with the $100, and we credit depreciation reserve with $100. Our balance sheet, at that time, will reflect on one side an asset valued at $1,000, and on the other side a reserve in the amount of $100, which on the balance sheet may be placed on the same side, the $100 being deducted from the $1,000, and the net value of $900 extended. If we assume, for some reason that seems best to the management, that funds are to be set aside to take care of replacement of that asset at the time it was anticipated that it would be retired, a special fund might be created, either in the amount of $1,000 or, if it was to be placed in securities, in a smaller amount which, with interest at the proper time, would amount to the cost of the asset. This method of setting up a special fund is quite unusual in accounting practices (T. 705). There is no standard practice as to whether depreciation reserve should be set up on a monthly basis or yearly basis. It is undoubtedly true that in the majority of cases depreciation is computed annually, for the reason that probably, in the great majority of cases, business concerns will not close their books more often than once a year. If they close their books semi-annually, they would undoubtedly compute depreciation semi-annually, and likewise if monthly accounting is used, depreciation would be on that basis. Renewals and replacements are charged against the depreciation reserve in the proper amount as they accrue. A repair is something which maintains the property in

approximately its present condition, such as replacing a broken window glass, repainting a building, renewal of small parts. A replacement is something which tends to improve the asset and to some extent restore it to its original condition. In proper accounting, repairs are ordinarily charged to operating expenses (T. 706). Renewals [fol. 636] would be charged against the depreciation account, but there are some exceptions. If we were renewing a property prior to the full depreciation having accrued, it is quite customary to charge against a depreciation reserve only so much as has been reserved on account of that particular asset, the difference being charged to the current operating expenses.

Depreciation, as carried on the books, is intended to represent the use that has been made of the property to the extent to which it has been deteriorated by that use. A tool that would only last a year would not be treated as if subject to depreciation. Hay, which might be used up in three or four months, would be charged immediately to expense. This would apply to other items such as coal. (T. 707). There is no difference at all between the use of a coal pile and the use of the property of a fixed asset nature, except as to time. For purposes of business, any wasting asset is simply a deferred charge against operations, whether it has a life of one year, or fifty years. One writer stated, "All of these assets are on an irresistible march to the scrap heap." A certain portion of their value is actually consumed every year in operation, and such value as actually is consumed is a part of the cost of operations. In practical effect, the depreciation reserve takes care only of items that have some extended life. There would be no essential difference in the manner of taking care, from an accounting standpoint, of the depreciation of a horse which might live 5 years and pens that would last twenty years, except as to the rate of depreciation.

Methods of Setting Up Depreciation Reserve

I am acquainted with the various methods used or available for use in setting up depreciation accounts (T. 708). There are several of them, but the largest part are nothing [fol. 637] but theoretical methods, and they are not found in actual practice. For example, there is what we sometimes call the maintenance method, which has it applica-

bility only in the case of a plant which has shaken down to normal operating efficiency, in which case the theory is that the current replacements, if charged to expenses, will take care of the accruing depreciation. I have known of that method being used, but used very infrequently. There is a method which we sometimes describe as the production method, which attempts to distribute depreciation on the basis of production, the general theory being that equipment used in producing an output will be able, during its life, to produce only so many units, so many tons of output, and that it should accordingly be depreciated in proportion to the number of units passing through each accounting period. There are other methods which attempt to distribute the useful value of an asset over its period of useful life on different bases. For example, the sinking fund method is a compound interest method, which distributes lighter charges during the early years of the life of an asset and heavier charges during the later years of its life. That method recognizes the fact that all of the life (T. 709) periods must bear the total expired cost of the assets but seeks to distribute it, as I say, with the lighter charges in the earlier years and the heavier charges during the last years. That is one of the compound interest methods (T. 710). The theory behind that particular method is that the property is not depreciating as rapidly during the early years of its life as it is during the later years, and that the curves computed in this manner would more nearly reflect the actual expression of useful life. In my experience I have not found that method in use with any of the companies which are public utilities and which have been my [fol. 638] clients, or with those whose accounts I have had contact when with the Bureau of Internal Revenue.

We have another method which produces a curve of just the opposite shape from the sinking fund curve. That is the one which throws the heavy charges into the early years of the life asset. The theory there is that the repair charges will be heavier during the later years, that by throwing heavy depreciation charges into the early years, the total repairs and depreciation will more nearly equalize year by year over the entire life. I have never seen this method used except in theoretical discussion.

Then, of course, we have the old standby, the straight line method (T. 711). In this method the cost or base value of the asset, less its estimated salvage value, is distributed over its life in equal installments. Under the best accounting practice, these installments are credited to the depreciation account each year. An exhibit, which has been marked for identification Respondent's Exhibit No. 10, is a slight revision made by the engineer of the Respondent of life tables and values made by the Government engineer and appearing in Government Exhibit No. 12. Respondent's Exhibit No. 10 shows the property of the Respondent as a property of many kinds, with various stages of life for the various units (T. 712).

Criticism of Sinking Fund Methods

It is what might be called a composite property including buildings, structures of various kinds, equipment, and so forth. In a property such as described in Government Exhibit 12 replacements and renewals would be required from time to time at unknown intervals, especially as I understand that property is an old one. If the property was first built in 1898 and the estimated lives of the various parts of [fol. 639] it are correctly stated in the exhibit, it would appear to be a property in all stages of age at the present time, from property of middle-age to property that has been probably replaced several times. In my opinion a reserve for depreciation for property of that kind could not properly be set up upon the sinking fund compound interest method. By that method I mean the method I described in my previous testimony (T. 713) or by the method indicated on Government Exhibit 12. It is more than likely that the property, which has been in existence for over thirty years, will reach a point where annual replacements or renewals will approximate the straight line depreciation over a period of years. The current replacements in any one year might not equal the amount of depreciation charged. In another year they might exceed the amount of depreciation charged. One of the weaknesses in the theory which has been proposed here is that if the amount which it is here proposed to allow as depreciation is to become eventually equal to the value of the property which is being depreciated, it must earn an income. I am not able to say

how this amount can earn an income in the business under any circumstances, whether it be $63,000 or $117,000. This latter figure appears in Government Exhibit 12 as the annual depreciation. That must mean, as I see it, that the property is being worn out or consumed at the rate of $117,000 a year and if it is to be continued in efficient operating condition that that sum, or some approximate sum on the average, must be put back into the property over its composite life. If that is done, there could be none of this amount which could be earning any income to be added to the principal sum.

There is another very fundamental difficulty and that is that according to my analysis of the situation, the sinking fund theory or a sinking fund theory of this kind, because [fol. 640] there are different applications of what might be called sinking fund methods, can not walk down the same street with a rate base computed at replacements less depreciation (T. 715).

As these exhibits stand the sinking fund would never have a chance to accrue; that is, the company would be losing property value of $117,000 a year and be compensated at the rate of $63,000 a year and would suffer a net loss of the difference.

With respect to the suggestion in Government Exhibit 12 that the $63,000 would be put out at compound interest of at least 6 per cent or perhaps 6⅔ per cent, I would say it was quite doubtful if such a rate of interest could be obtained over the composite life of 26½ years because there are various elements that must be taken into consideration in the establishment of such a fund. It must be invested in such securities as are readily marketable because you may have to use some of the funds at any moment for replacements. The funds would have to be in securities which would both have a ready market and would not be subject to fluctuations in value (T. 716). I don't think we can find that kind of securities that will pay over 6 per cent to 6⅔ per cent. If a 6 per cent bond were purchased, if one could be found and bought at par, and at the time the money was needed the bond was selling for 90, our fund would fall short just that far even though we were still getting the 6 per cent. Where the entire fund would accrue for the composite life of the property, the

money would have to be placed in high type securities. In that event you might be able to pick certain maturities which would eliminate to some extent the element of gamble (T. 717) in market value. That is about the only distinction that I would make between that and if you were funding the reserve for the purpose of taking care of retirements from time to time. In the latter event, where the [fol. 641] securities would produce a sure return and at the same time we could obtain, say $100,000 the middle of next month, if we needed it, the securities would be of the type that are available for trust funds, such as Governmental and municipal securities, very high grade bonds, public utilities bonds, yielding perhaps up to 5 to 5½ per cent. Some yield 4 and 4½ per cent. If the renewals and replacements approximated the straight line method of writing off depreciation there would be no chance for any investment of the funds. It has been suggested that the money in the depreciation account be put into the business instead of in outside securities. I do not believe that that would be practicable with a depreciation account which is to be compounded annually and produce a certain definite amount at the end of a definite period of years (T. 718). In the first place, it is altogether too speculative, subject to the vicissitudes of the business, and there is always the possibility that any property in which it might be found necessary to invest the funds would not produce the theoretical rate of income. For example, if it were necessary to build an addition to the Exchange Building, such addition might be needed for administration purposes but probably would not earn its 6⅔ per cent. Another example would be in case it was necessary to put roofs over pens where they do not now exist or change the type of feed trough or something of that kind. This would not necessarily bring about any return on the investment unless it was accompanied by a change in rates (T. 719). Another example would be if the wooden fence posts were supplanted by cement fence posts and there were no change in rates.

If $40,000 cash were accumulated and $20,000 were needed for a particular improvement, naturally the other $20,000 would not be producing an earning, unless it were invested outside. If the company felt that in twelve [fol. 642] months from now they would need twelve more pens and decide to complete the twelve all at once, there

would be an apparent loss of income for the money invested in that addition (T. 720). That would continue until such time as the capacity of the pens, or the facilities, were fully required. In order to make this theory work out at all, assuming it could work, it would first be necessary at the close of every accounting period to have the necessity for income-producing additions of an amount exactly equal to the depreciation charge. These additions would have to be constructed in an Aladdin's Lamp style; that is, they would have to be brought instantly into place, and instantly must begin to earn income at the estimated rate, and any respect in which it fails will result in the depreciation reserve falling short to that extent. The period of construction would constitute a loss of part of our interest as well as the period between the time when the additional piece of property was constructed and the time it came to a use where it would earn this rate of return (T. 721). I regard this as a serious obstacle to the use of that method and think it would make it impossible to use in that manner.

I have never seen or heard of any accounting system which recommended the use of a sinking fund method as indicated in this case for the use of a property such as a public stockyards. No accounting system with which I am familiar ever recommended such a use of the sinking fund method of depreciation. I have discussed this subject with other accountants and have found that they are unanimously of the opinion that it is not a practical method. So far as my experience has gone the Income Tax Bureau has never allowed any method of writing off depreciation than the straight line method (T. 722). I was in the bureau at the time the question was under discussion in 1919 and [fol. 643] 1920 but I cannot say that the policy of the Bureau was definitely fixed at that time any more than prior or subsequent thereto. I attended some discussions when I was attached to the bureau at which these other methods were brought up but they were dismissed and so far as that is concerned I don't think any of them has ever been seriously considered. You can probably say that the policy of the bureau has been to use only the straight line method from the very beginning; that is what it does now. There has never been any other basis. That applies to both individuals and corporations (T. 723). The sinking fund method so far as I know its ever having been considered

by the Government related only to the distribution of the expired value over the period of years and not to any compound interest method. What I meant a moment ago when I said it depended upon a question of rates was that over the life of the property exactly the same amount would be recovered by the tax payer and allowed as a deduction under one method as would be allowed under another, but under the sinking fund method the heavier charges would come in later years. Now, during the years of high taxes, '17, '18, '19, '20 and '21, particularly, if the sinking fund method had been used naturally the depreciation charges in those years would have been much less and the income much higher, and the tax would, of course, become much higher. If the Income Tax Unit permitted a corporation to write off $100,000 depreciation for its plant, the tax would be less than if it allowed it to write off $50,000 (T. 724). If the reserve of $63,000 a year were put into some security, rather than to take the hazards of the business, the income would be taxable except to the extent that it is invested in tax-exempt securities such as State or municipal bonds (T. 724-a). The fund would fail to the extent of the amount of the tax. The extent of that failure carried on by [fol. 644] compound interest computation would become much larger ten or fifteen years later.

I am familiar in a general way with the way in which this subject has been treated by the Interstate Commerce Commission. That commission issued an order prescribing depreciation for steam railroads in 1926 (T. 725). That opinion and order is found in 118 I. C. C. 295.

It is agreed by counsel that the Secretary of Agriculture may take judicial notice of the above-cited decision, being Docket No. 15,100 and in that connection counsel for respondent calls particular attention to that portion of the report beginning on page 353 and under the title "Determination of Depreciation Charges" and ending about the middle of page 356 (T. 726).

Assuming that in this proceeding the value of the property to be used as a rate basis is not the cost of reproduction new but the cost of reproduction less depreciation as determined by the Secretary upon the evidence in this case, it would be improper to accompany such a depreciated value with this compound interest reserve fund method. In the first place, the use of a depreciated rate base pro-

ceeds on the theory that the company is not entitled to any compensation for the use of the property which has been consumed. If it is not entitled to compensation for the use of the property which has been consumed then it is certainly entitled to compensation for property as consumed (T. 727). It is only good logic that the company must either receive compensation for the use of property, or compensation for the property itself. For illustration, if a composite property of this general nature when constructed new is worth a million dollars and the rate base is going to be fixed upon the depreciated value which at the end of one year is $900,000.00 in my opinion the owner of the property should not simply take a loss of $100,000.00 because he has [fol. 645] operated the property for a year. It would require nothing less than $100,000.00 to make him whole for that loss in value for that year. Suppose we conceive of a property which could continue to function on a continually declining line, a property which cost originally a million dollars and eventually winding up in 10 years at a cipher, it might be possible with a declining demand as the value of the property was consumed it could continue to function and serve the community. At the end of the first year a value of $100,000.00 would have expired. Beginning new the company would naturally be entitled to earn on one million dollars (T. 728). Assuming that at the end of the first year the value dropped $100,000.00, the return from the following year would be computed on $900,000.00, but the owner must be paid his $100,000.00 for the value of property consumed in the business the first year. At the end of the second year we have another drop in value of $100,000.00. The owner must be paid that $100,000.00. This would continue the succeeding year and the return would be computed upon the basis of $800,000.00 and so on.

In the sinking fund method proposed by the Government the owner will not be so reimbursed each year (T. 729). The sinking fund method proposed by the Government might be a fair method if the cost of reproduction new would be used as a rate base, except for the rate of interest. In that event the owner would always be earning on the amount invested in the property during its life. All it would need would be something to take care of the property at the end of its life. In other words, I think it is

entirely out of question to expect to place funds of this kind in, and at the risk of, a business and expect it to be earning money at a theoretical rate of return. On the other hand if the rate of interest is computed at a fair investment [fol. 646] rate, and the rate is based upon replacement, no doubt the answer would be fair, but the two theories do not mix, that is, the straight line theory goes hand in hand with the sound value or replacement less depreciation. The proper sinking fund method goes along with the return upon the replacement new, for more or less obvious reasons. The first method contemplates that the owner would be reimbursed for the consumed part of his property currently, and the other method assumes that the owner is not to be reimbursed until the property is retired. If he is not to be reimbursed until the property is retired, then he is entitled to earn on the property until he is reimbursed (T. 730). That is practically the doctrine of the Interstate Commerce Commission in the case to which I have referred. The case of reproduction new and sinking fund must get together or depreciated rate base and straight line. You could not mix the two, one inherently involves the other. In my opinion the use of the depreciated rate base plus the sinking fund method, proposed by the Government, in fact deprives the owner of a part of his property value during the entire life, assuming that the factors I have before me are correct.

Government Exhibit No. 12 sets forth a statement taken from the books of the company of the amount charged to repair for some recent years and also shows the amount charged by the company to its depreciation account for some recent years (T. 731). If a new system of accounting is to be adopted and a new basis for depreciation and a new rate base, it would not make any difference as to the propriety of the future as to whether a mistake had been made in the past in the repair account or the depreciation account. If the theory is sound, it is sound regardless of mistakes that have been made. If an item were charged to the repair account which should have been charged to [fol. 647] replacement and depreciation accounts, that is an error at the time it is made, and if made in the future would likewise be an error. The past accounting methods of this company would not in any way affect my opinion as to the depreciation of the accounting methods for the future, so

far as depreciation is concerned and by whatever method used. As an accounting matter the straight line method of estimating depreciation reserve account is much simpler than the method proposed by the Government (T. 732).

By way of summary, I have not known of the sinking fund method being used for property of this character in my experience in private practice or in Government offices. In my opinion Respondent would not receive on account of depreciation, from its patrons, as much as is lost in property value. The straight line method would naturally avoid the uncertainty of long term investments, rates of return, and possible fluctuations in value of securities in the utility in that there would be no necessity for any such investments. As far as I am familiar with stockyards property, the sinking fund method here recommended by the Government has never been used. I think it is incumbent upon the public which patronizes and uses the property to pay the owner, each year, an amount equivalent to his loss in property value due to the use by the public (T. 733). Any less amount would be depriving the owner of property value.

Cross-examination:

For some of our clients we audit their books, for others we make tax returns and for others we do both. We probably do not audit the books of most of them. We did not audit the books of the public utilities mentioned among our clients in the sense of making the annual audit. We have a staff of from three to six men who are making what [fol. 648] might be regarded as a continual audit of many features of the accounts, of one of the customers in particular, that is, the Columbia Gas and Electric System (T. 734). These audits are made for the purpose of analyzing the accounts to make certain that charges have been properly made and to see that they are properly reflected in the tax returns. The audits that I have just referred to are made solely with a view of making tax returns. We never make audits for rate purposes. I am reasonably familiar with public utility methods of accounting but have never kept accounts for a public utility. I have never examined the books and records of the St. Joseph Stockyards Company.

I stated that the reserve fund account reflected the funds of securities which had been set aside, or earmarked for the accomplishment of a particular purpose, as indicated by the reserve which is carried on the other side of the ledger. (T. 735). This fund would represent cash or securities. I suppose that it might be invested in some property but I have never known of it being done, it is very unusual. We always think of the fund as something that is readily available and readily convertible. I have not seen Government Exhibit No. 11. On page 1 of Government Exhibit No. 11 it appears that two amounts have been set aside for depreciation; first, the reserve for depreciation of buildings and improvements amounting to $1,320,102.34; and a reserve for depreciation of equipment, furniture and fixtures amounting to $72,450.04 (T. 736). The amount collected through depreciation is not necessarily ear-marked, it may be invested and reinvested. There is nothing ear-marked here that would represent it. By "reinvested" I mean for example for that reserve from earnings $100,000, representing depreciation, that simply means that we set that apart, out of surplus. It is not going to be [fol. 649] distributed to stockholders, but on the asset side of the balance sheet it may be represented by assets of different kinds.

Government Exhibit No. 11 indicates that there might be some of the depreciation reserve invested in lands and some in the Belt Railway. According to that Exhibit $514,000 is invested in the latter. There is not any way of telling the source of any fund or asset appearing on the balance sheet, page 1, Exhibit A of Government Exhibit No. 11. It would be quite possible that the $514,000 is money provided by the depreciation reserve (T. 737). According to Government Exhibit No. 11 Respondent has outstanding in first mortgage $1,190,000 and an outstanding capital stock of $3,750,000. Other than the first mortgage bonds and the capital stock there are certain current liabilities. Rents and deposits paid in advance $1,038.97; accounts payable, $20,035.53; accrued taxes, $74,027.35; accrued insurance, $368.82, then, we find surplus of $383,747.08 (T. 738). The total assets amount of $5,419,217.75. The reserve for depreciation is not included in that figure. The gross amount would be procured by adding to the last named figure the amount of the depreciation reserve which would give $6,811,000 plus. We do not ordinarly think of

it in that light though, because the depreciation reserve after all, is but a valuation account. A more proper showing is made, by using the net figure. The depreciation reserve itself represents the actual figure that has been deducted in times past as an operating expense, set aside for this purpose, but what I meant was the smaller figure which I first named, that is $5,419,000, more correctly reflects the condition of the company in that it goes to the sound value of the assets, rather than the figure $6,811,000 which reflects the original or base value, gross, from which some other figure must be deducted to determine the net value. [fol. 650] (T. 739). From the balance sheet in Government Exhibit No. 11 it appears that Respondent has current assets amounting altogether to $169,735.64; land amounting to $3,372,969.25; net value of buildings and improvements amount to $1,323,907.97; net value of equipment, furniture and fixtures amounting to $22,629.75; investments amounting to $518,953.95; and prepaid items amounting to $11,021.19. Whether the figure $1,323,907.97 represents the amount invested in lands and buildings depends upon how "invested" is defined. I could not tell from the balance sheet whether the figure $2,644,010.31 represents the actual cash investment in this property, with the corresponding assumption that the $1,32[illegible]00 just referred to would be a residual amount from that original cash investment or not. This gross figure might be figured from appraisal, for all I know. It might be an actual investment or it might be an appraisal figure. (T. 740).

There might be some fine-haired distinctions as to what is meant by "invested." The amount of $1,393,552.38 has certainly been accounted for in the accounts of the company. I don't know whether the company has it invested in any form. I know as a matter of experience that these things are not lost in the accounts. The depreciation when charged off is accounted for. Just what has happened to it since no one could tell, of course, without following through the records. We do not set funds aside in the depreciation reserve. That reserve is set up regardless of whether it is funded. The funds that are provided for, or allowed for, as a depreciation reserve are simply allowed to remain in the business without any ear-marks. (T. 741). They may be in working capital for a while; they may be invested in additional plant; they might be invested in securities. If good business judgment and prudence do not

[fol. 651] dictate such a course of procedure on the part of a company there are some pretty good ones that have gone bad. I do not know of any other procedure that is followed by the best managed corporations in the country. A company that is well managed will allow the amount to remain in its business. (T. 742). Undoubtedly a company using good business judgment will put these funds to work in some form or other. If it is at all possible they will be earning something and there are various ways in which they can be put to work. If the funds are not needed currently in working capital the company may buy securities of some form. Also the company may use the funds as working capital or as part of the permanent assets of the company but in whatever form they are working presumably they are making money for the company.

I would not approve of a company using its depreciation reserve for the payment of special dividends or items of that kind. (T. 743). It is my opinion that such funds should be kept within the management of the company for the purpose of earning in some form of security or as working capital or as a part of the assets of the company. I do not know what Respondent is now earning on its investment in the Belt Railway Company. I do not know what Respondent is earning on any of its other investments or on its loan of $50,000 to an affiliated company.

It would be very difficult for the company to invest these funds which are allowed for depreciation reserve so as to earn with certainty a very large rate of return. I don't think it would be safe to assume that they could be invested in securities, which would have a ready market and no very great fluctuation in price, to yield more than, say, five per cent. (T. 744). I think it would be quite possible to make investments that would be safe, that would yield more than five per cent, but not with the possibility of in- [fol. 652] stant liquidation, nor with the reasonable assurance of no wide fluctuation in market value. When I speak of a depreciation fund I always have in mind something which appears among the assets, as an ear-marked fund. In that respect a corporation ordinarily does not have recourse to a depreciation fund, because they do not ordinarily ear-mark funds. (T. 745). If Respondent wanted to make a replacement or renewal costing $200,000 I don't know how it would proceed. It would probably go ahead and order the work done and the money would be available

as the work proceeded. There happens to be only $46,000 in cash in the accounts of the company at that particular moment, but, of course, that is not at all important. I assume that its borrowing capacity and earnings are good and there would be no trouble in financing the work. If we had an entirely different balance sheet and the depreciation reserve here shown had been funded and would be represented on the revised balance sheet by securities or investments (T. 746) I assume that Respondent would proceed with the work even though the funds were not readily available. Respondent would get the money to pay for the work either from current receipts, if it had to be paid for instantly, or if charges were deferred a while, from receipts as they were made available, or by loan. The investment of funds which have been provided for by depreciation allowance would not be a deterring factor in carrying on necessary improvements.

The Income Tax Bureau not only permits the taxpayer to figure depreciation on a straight line basis in making his tax return, but requires it. The basis used is usually either on a cost or a valuation as of March 1, 1913, depending upon whether the property was acquired subsequent or prior to that date. The purpose of taking March 1, 1913, [fol. 653] is because that was the effective date of the income tax amendment. (T. 747). If a company makes a reappraisal and sets that upon its books it is handled very roughly by the Income Tax Bureau. That is it is disallowed as a base for depreciation. Of course there are some cases in which appraisals might be accepted, as in cases of certain sales or reorganizations which are subject to tax, but in those cases it goes under another theory which is that the appraised value becomes the cost of the new organization. From a standpoint of good accounting it all depends upon the circumstances whether depreciation should be figured on the appraisal base or the original cost base. There are many cases with old established companies where a cost less depreciation base does not correctly reflect the financial position of the company. It might understate it a great deal. There are cases over a period of years where accounting errors will creep in. They are bound to in an organization of any size. Items will perhaps be charged off that should have been (T. 748) capitalized, and we perhaps eventually reach a point where in

order to get a correct picture of the financial position of the company it is necessary to have an appraisal made for the purpose of correcting the value of the assets, correcting the depreciation reserves, and so on. That, however, is something entirely aside from income tax procedure, in which the practice is inflexible. There are many reasons, of course, for setting up appraisals in the books of account, some of which I think are fairly good, and some of which are not so easily justified. We find it done sometimes, largely for credit purposes. They are perfectly proper appraisals.

During some of the years following the war we found a great many balance sheets that had to be dressed up to keep the standing of the company, at least on paper, in such a condition that the bankers would still loan money. [fol. 654] There is always more or less of a question as to the propriety of including appraised figures, and each case must be analyzed on its own merits.

From an accounting or bookeeping standpoint the amount of depreciation resulting from a new appraisal is just added into the value of the property. (T. 749). On the other side of the balance sheet the best practice would require it to be ear-marked as surplus from appraisal, although there are some of the very best accounting firms in the country that will merge it with the general surplus of the company. Surplus does not necessarily mean an earning, inasmuch as some of it may have been paid in. The definition of earned surplus is one that has taken the accountants a good many years and they haven't gotten a good definition of it yet, but it appears as a part of the general surplus of the company instead of being particularly marked as having arisen from an appraisal. The handling of depreciation after such a reappraisal had been set out on the books would depend upon the purpose for which the depreciation was being computed. For the usual purposes of the company one would perhaps start right over again and depreciate the new base. For tax purposes one might deduct only the amount of the original when the depreciation is computed upon the original base. (T. 750). Assuming that a public utility has made a reappraisal and set it up on its books and then proceeds to figure its amount of depreciation reserve on the basis of the reappraised value, the effect in my opinion upon the user of the public utility

service would be that he would be paying a pro rata proportion of the value as determined by the appraisal. That is the principle that I believe has been approved by the courts. I think it is fair. In such circumstances the user of the service is not investing money in the company as he pays the rates, but is paying the investor for the use of his [fol. 655] property. He is not investing to the extent that he is paying for depreciation on a basis of the depreciated value above the former value. If the courts hold that the owners of a property are entitled to a return upon a rate base determined from current replacement value, then that property certainly belongs to the investors. In a case like this I would say that the depreciation reserve clearly should be figured on current replacement value. (T. 751).

The purpose of a depreciation reserve is to reflect the accrued depreciation existing in a property. The object of making an allowance for it is to distribute more or less evenly over the life of a property the losses in value. Assuming that a building worth $100,000 has a 10-year life and for simplicity assuming that it has no salvage value my straight line method would, at the end of five years, have allowed for depreciation reserve $50,000. (T. 752). Then assuming that there were a proper reappraisal such as the Secretary of Agriculture might make resulting in a new value of $100,000, the amount of depreciation to be allowed would depend upon whether or not the new appraisal were set out on the books. If it were it would be set up for some purpose. If $50,000 be brought back into the books and the face value is shown as $100,000 it certainly must come off somewhere and the only way I know of getting it off is through depreciation, but naturally we will have to write it off again. (T. 753). Assuming that the remaining life was still only five years we would naturally charge off $20,000 at the end of the year and at the end of the life of that building we would have accumulated altogether $150,000 though the assumption was that the original asset was worth $100,000. Under those circumstances if the depreciation reserve has been collected through rates, the patrons of that utility owning such a building would have [fol. 656] returned to the utility $50,000 more than the building cost. Assuming further that the utility had been receiving a fair return upon the property the question of whether this method of handling depreciation is fair has

been answered by the courts. (T. 754). I think it depends altogether upon whether a regulated industry is entitled to a return upon replacement value. If so, that answers the question. I think the earning of a fair return is related to the amount charged for depreciation. Everything will be out of joint if all the computations are not based upon the same base. I don't understand that there could be any income from the funds connected with the depreciation reserve, but aside from that it is my opinion that a utility is entitled (T. 755) to earn upon replacement value a fair rate of return with depreciation computed on the straight line basis. Replacement value might be more than cost and it might be less. It would be possible for a company to invest any funds which it might have in its possession but I am a little doubtful as to whether it could very well set aside any particular earnings as representing an earning from a depreciation fund which it could add to a fair return. I don't think that has any part in the computation. Good business prudence would lead a company to put to work those funds which had been set apart or allowed as a part of the depreciation reserve in the same way that it is desirable for the company to keep any funds working. (T. 756). It is possible that a company would be earning something from the funds provided by the depreciation reserve if a corresponding amount had not been expended in replacements, always bearing in mind that we can't ear-mark those funds.

Returning to the illustration of the $100,000 building which had been depreciated $50,000 and then replaced at $100,000, I think the question of whether it is fair to ask [fol. 657] the patrons of the utility to return to the company $150,000 for a building which cost $100,000 has been answered by the courts and is something which works both ways. If replacement is the correct basis it would apply whether it was higher or lower than cost. It is very much like a building one might own. It may have cost him in prewar days $100,000, but has a replacement value today of $300,000 and a corresponding rental value, I think that anyone owning such a building would think that he was entitled to a return on the $300,000 regardless of the fact that it cost him $100,000. In saying that the question has been answered by the courts I mean answered in the way that I have stated it and that I agree with the courts (T.

757). In case of a building which has decreased in value, the circumstances would be reversed. In other words the owner of a property which enhances or decreases in value, due to extraneous circumstances, either benefits or is injured by reason of his ownership. It is one of the inherent factors of the ownership of property. If the owner assumes the risk of declining value he surely would be entitled to the benefits from the enhancement in value. Such a decline may be brought about by a general trend in prices. We have seen a gradual decline in prices since the peak following the War. In a public utility other factors which might cause such a decline may be obsolescence or advances in the art (T. 758).

"Q. So then, I will ask you again this question—that in your opinion you think it is fair to charge the patron of the utility, in addition to reasonable rates, the depreciation figured on a straight line basis, and if there has been an appraisal of property showing an appreciation in value, a depreciation reserve allowance on the appreciated value, and any additional income it may be able to earn as a result of its ability to so invest depreciation reserve funds in [fol. 658] securities or other forms of income bearing property, is that correct?

"A. In the first place, I think that the illustration that has been used is perhaps a little exaggerated; in the second place, I think that we might give this application to the situation of the industry that is being regulated for the first time. In such a case I don't think that what has gone before has any place in the picture at all, any more than in the tax law, what had gone before had any relation to the fixing of tax rates. The income tax amendment became effective on the first of March, 1913, and regardless of the fact that entire properties might have been charged off, they were restored to the books and the new starting point acquired at that time. In a case such as this I can see no reason why, if there have been mistakes in the past, if there have been (T. 759) reappraisals or what not, I can see no reason why a company should not be given a fresh start. The stockholders who are to come have nothing to do, perhaps, with the stockholders who have held in the company heretofore."

I mean the company should be given a fresh start from the date the regulation of a particular yard actually goes into effect. No matter what time in the future that is and it would be subject perhaps to an adjustment from time to time. I believe my previous answer took exception to the suggestion in the question quoted above that the patron would be expected to pay, in addition to a fair return, depreciation, for the reason that a fair return would presumably include a proper depreciation. Aside from that it is my opinion that the patron should pay a fair rate including depreciation computed on a straight line basis on a current replacement cost, but I would not be able to agree that there would be further income which would be earned by the company from its investment, or from funds secured through the operations of a depreciation reserve, because under this method there would presumably be [illegible]ds to invest separately, and such funds [fol. 659] as could be available would be merely a part of the working capital flowing through the business in the usual way. The rate base would remain the same, unless upon motion of one of the parties a revised base was allowed (T. 761).

Returning to the illustrations of the building, the original value and re-appraised value, after five years, of which was $100,000, and assuming that the remaining life is five years, so that the depreciation charge would be $20,000 per year, and assuming further that rates are fixed at the end of five years, and the building goes into the rate base at its re-appraisal figure of $100,000, and that the utility is allowed to earn 7%, when we come down to the last year in the life of the building, the end of the ninth year, we would have a building the depreciated value of which would be $20,000, and it might sound correct to say that on that building we would be asking the patron of the utility to pay 7% on $100,000, or $7,000 (T. 762). As to whether or not it is correct, I will say that we are assuming here that the rates were fixed at the year in which the property was appraised, at $100,000. I would assume, at that time, there were other items of property, which, together with this building, might be the entire property. It is hard to assume upon property which is made up only of a single item, in other words. In a property of that kind, we find that it shakes

down after a period of years to a point of normal condition, and, generally speaking, carries along at about that point, you might say, almost indefinitely, perhaps at 75% condition, and that, we might assume, is the point at which, or the base on which, the property is paying the owner, and that without fluctuating greatly the actual value of the property will drop a little and be restored; it will drop a little and be restored; but it is hardly fair, in a picture of that kind, to try to compare the situation [fol. 660] with a single asset, the value of which is diminished until it reaches the point of zero.

That is because any ordinary public utility property is made up of varying types of structures, with varying life periods. With reference to shaking down to normal condition, I refer to the plant as a whole, not the one building (T. 763). You will find property which is nearly 100%, a property which is new, but, generally speaking, taking representative plants by and large, probably the figure of 75% condition after several years' operation would be representative. That part of my previous answer which referred to the maintenance of the property at about 75% condition by upkeep and construction work applies to the property as a whole. Ordinarily, the company would keep it at that condition per cent by repairs and maintenance, and necessary replacements and renewals. Regardless of whether we use a straight line or any other method of figuring depreciation reserve, it is necessary in order to arrive at some conclusion that we use definite life tables on which to base our calculations, if our depreciation computation is related to a definite life in point of time. We may conceivably figure depreciation on a production basis. For example, the linings of a blast furnace might be good for so many loads, and then would have to be renewed, and we might depreciate it on the basis of loads, but generally those methods are not used with respect to showing sinking funds (T. 764), or fixed percentages on a diminishing basis. The straight line method has to be determined on useful life.

The fact that the property may be maintained in 75% condition does not render the illustration of this building altogether impractical, except to the extent that it hardly represents the situation fairly because it would indicate that the public was paying return on a $100,000 basis for

[fol. 661] the use of a property that was worth only $20,000. I did not say that I would not make any adjustment in the rate base for depreciation. I said I would use the same basis for depreciation purposes as I used for the return (T. 765).

If the straight line method were applied, the rate base would remain the same, unless we got to a point where on motion of one party or the other a re-valuation for rate purposes was permitted. I do not imagine that there would be much change necessary if the rates were properly fixed in the first place. I would assume that the actual accrued depreciation corresponded rather closely with the estimate of depreciation, if the property were restored from time to time in about the amount of the accrued depreciation. Thereafter, the net investment in the property would remain about the same, and superficially I can see no reason why there should be any change (T. 766). Assuming that rates were fixed on the basis of reproduction new, less depreciation, and that out of the first year's operations there would be obtained earnings to pay all expenses, and set aside an allowance for depreciation reserve determined by the straight line method, the rates for the second year might be adjusted in accordance with the fair return on the depreciated value of the property as of that date, if one wanted to split hairs, but, generally speaking, I do not think a property will be found running that way.

I imagine that if one visualizes the depreciation of the property as a line, it would run rather swiftly down hill, but the line does not run that way. It is a sort of zig-zag line, a saw-tooth line, if you please. In the early years of the life, it takes a rather rapid down-sweep, and then levels out. Thereafter, with smaller ups and downs, due to depreciation and restoration, it keeps more or less on that level, except for major retirements and abandonments, or [fol. 662] additions (T. 767). Therefore, as a generality, it is my opinion that no adjustment would be necessary, but I do not apply that to particular cases.

Referring to page 1 of Government Exhibit No. 11, the depreciation condition of respondent's property is there shown as about 50%. I do not know what was the per cent condition as shown by the appraisal of the respondent or by the Government (T. 768).

I have been assuming that the auditor for the Government computed the depreciation reserve on the basis of the estimated lives of property, as computed by the Government engineer, and that he took the reproduction new value as fixed by the Government engineer.

I have not been down to the St. Joseph stockyards, and am not familiar with the character of its property, but I am familiar with the types of property in the Union Stockyards at Chicago, the St. Paul Union (T. 769) Stockyards, and the Sioux City Stockyards. Generally speaking, it is to be expected that after the company has been operating for a period of time it reaches a certain basis of efficiency of operation, and its condition per cent from then on remains normal. That is for the reason that current replacements ordinarily take care of current depreciation, and are more or less regular in their occurrence. I have never made any study to determine how long a stockyard would operate in order to reach that basis, but I would say that this particular stockyards has undoubtedly reached such a point. It is my understanding that it has been in operation since 1898. With reference to the showing on the balance sheet, which is page 1 of Government Exhibit No. 11, that the reserve for depreciation is approximately 50 percent of the value of the buildings and improvements, (T. 770) page 20 of the "Stipulation of Values," which is Government Exhibit No. 10, shows the condition percent of the [fol. 663] property as determined by Respondent's engineer, the Government engineer, and also a revision of the Government engineer's estimate on a few units of the property. Comparatively few of those condition percents range as low as fifty; others range higher, some up to one hundred. If a composite figure were taken, it would be considerably higher than fifty percent. The difference between those figures and the depreciation shown on the books would seem to indicate that the depreciation (T. 771) written off heretofore was in excess of the depreciation actually accrued.

It is not necessary that the total reproduction new value, less depreciation, plus the allowance for depreciation reserve, should equal the reproduction new value of the property. In fact, it would be a rare accident if it did. It would be necessary, in order to approximate that total, that the

accrued depreciation on the books should be approximately the amount of depreciation accrued by the engineer's figures. I can see no relationship between the two figures, nor the way in which they are accumulated. The purpose of the depreciation reserve, which is found on the books, is to reflect accrued depreciation existing in the property, and it is quite conceivable that there would be differences, either up or down. The reason for that might be because the company had set up either too much or too little, (T 772) or there could be other reasons. It might be that the base value as used by the company was considerably less than the appraised value. It might be that the rates of depreciation were exactly the same, that is, as used by the company and as used by the engineers, and that the accounting for repairs and replacements had been handled perfectly during all the years. Assume, for example, the base value used by the company was one hundred thousand dollars, that the replacement new value found by the [fol. 664] engineers was two hundred thousand dollars; we might say, speaking generally, that with perfection in accounting methods, and with the use of approximately the same rates, the reserve accumulated by the company would be approximately half of the reserve accumulated by the engineers. If there has been no appraisal of the property and the depreciation has been figured on the same value throughout the period, it would be expected that the relationship between accrued depreciation and depreciation reserve would be closer than when you introduced an appraised value (T. 773). If during that period the property were appraised at a higher value, it would tend to increase the depreciation reserve and would have a tendency to cause the amount calculated on the reappraisal to be higher than that set up on the books. If the amount set up on the books for depreciation reserve reflected approximately the actual depreciation of the plant, and the engineer found a value which was approximately the book value, the reproduction new value, less depreciation, plus the depreciation reserve, naturally would approximately equal the reproduction new value (T. 774).

Assuming that 26 years is the composite life of respondent's property and considering the depreciated value of the property as shown by the books, I cannot estimate how long it will be until the entire assets are wiped out, if the

respondent pursues the same policy in setting up depreciation on its books as it has in the past. It may never be wiped out. Let us assume that the 26 year life which you mentioned is correct, we then reach the conclusion that that being a composite of all the property, that the property is actually being consumed at the rate of 1/26th a year, that that 1/26th amounts to some 136,000 dollars. If this property has reached a normal condition percent, as I think we [fol. 665] can further assume that it has, it must further be assumed that that 136,000 dollars a year has got to be put back into that property to maintain it in efficient operating condition. That may not be put back this year in its entirety, it may not be put back next year, in its entirety, but over a period of years it must be put back or the operating efficiency of the plant will be impaired. Therefore, as I say, the remaining value appearing on the books of the company may and probably would never disappear, but would remain more or less constant, assuming proper accounting methods, and excepting, of course, their additions to plant or retirements.

A comparison of the condition per cent found by the American Appraisal Company with that found by the Government engineer indicates that respondent's property is being maintained in first class operating condition (T. 778). It would probably require an engineer's examination to determine whether there were renewals or replacements that had been deferred and may have to be made at a later date. The Government condition per cent is about 78½, which shows a falling off of 6½ from condition per cent found by the American Appraisal Company in 1922. It would be quite possible that there are certain deferred items which may sooner or later require renewal. The discrepancy between the American Appraisal Company condition per cent and the Stockyards' engineer is only about 2 per cent.

Assuming that the figures on page 54 of Government Exhibit 11 are correct, it would seem that $553,791.71 has been set up on Respondent's books from January 1, 1923 to June 30, 1929, for depreciation reserve (T. 779). The exhibit also shows that the figure for "Retirements and Adjustments" for the same period is $11,957.55. Government Exhibit No. 12 indicates that respondent has charged to repairs since January 1, 1923, $270,390.02 (T. 780). Re-

[fol. 666] ferring to pages 21 and 22 of Government Exhibit No. 11, it shows net additions amounting to $49,489.36 to the plant account since the appraisal, and without referring to retirements, the total additions amount to $66,218.08. That covers a period of 6½ years and would average about $10,000 a year (T. 781). During that same period the repairs would average about $40,000 per year. The depreciation set up, as shown by Government Exhibit No. 12, averages over the same period about $125,000 a year (T. 783). It is a fact that taking repairs, plus the amount set up for depreciation by the Government auditor in Government Exhibit No. 12, determined on the sinking fund basis, is far in excess of the amount expended by the company annually in the past six and a half years for repairs of all kinds, and for additions to property or to plant account, regardless of whether those additions were renewals, replacements, or actual extensions of property, but that I think has nothing to do with the question as to which I have been testifying because there may be accounting errors in the books. There may be deferred maintenance, about which the records reflect nothing. We are assuming, as I understand it, a proper procedure for the company which contemplates the use of proper accounting methods in the future. It is my opinion that the history of the past may reflect something with respect to the probabilities of the future, but I would want to base my opinion on a much further investigation than I can make by looking at a few figures of this character (T. 784). As to whether the figures which have been called to my attention indicate clearly that the allowance determined by the Government auditor in Government Exhibit No. 12 appears to be a liberal allowance for depreciation reserve, I can only answer that, assuming the use of figures which I have before me. As I [fol. 667] have indicated, it had been my understanding that it was the purpose of this investigation to eventually determine and set up a proper accounting procedure for the future, regardless of errors which may have crept into the accounts of the company in the past, and that one of the bases for that future accounting procedure was the estimated life, useful life of the property of the stockyards that has, I have understood Government counsel to just state, is acceptable to the Government and shows a composite life of twenty-six years, from which the only assump-

tion that can be drawn is that the property is actually depreciated to the extent of $136,000 a year. Whether there have been some mistakes in the accounting for repairs and maintenance, as against replacements, in the past, I do not know, but I do know that if the Government estimates are correct, that over the period of years, it is going to require an average of $136,000 a year to make good the losses, due to wear and tear, and that if the company does not receive $136,000 a year, it is not going to be able to maintain (T. 785) this property and will not be properly compensated for the accrued loss. Assuming that there are no errors in respondent's records or accounting methods, I cannot see how the Government allowance for depreciation would be liberal in view of the Government's own figures. In other words, the Government would be in the position of saying, "We admit that the public is consuming $136,000 of your property every year, but we are proposing that you be paid for it at the rate of 40 cents on the dollar." There may have been charges to the repair account in the past that might properly have been made to the depreciation reserve. I cannot tell from this record, cannot tell without an examination. In view of these figures it is quite possible there may even be a deferred maintenance that I can tell nothing about from these figures.

[fol. 668] Respondent's Exhibit No. 10 shows that the estimated life of the Exchange Building, as agreed upon by Respondent's and Government's engineers, is 50 years (T. 786). As an accountant I would probably charge depreciation at the rate of 2% per year. For the estimated age of the building, 30 years, a gross of 60% of the value of the building would have been charged. There may have been charges against that reserve for replacements. Government Exhibit No. 10-A shows condition per cent as calculated by the Stockyards to be 89, and by the Government 70. That indicates to me, as an accountant, that the building has been very well maintained.

Examples of items which I classed as repairs, other than those mentioned in my direct testimony, are the replacing of minor machinery parts, minor plumbing repairs, a few shingles on the roof, and a few boards on the floor (T. 787). In drawing the line between items which should be classed as repairs and maintenance and those which should be regarded as renewals and replacements and charged against

depreciation reserve, accountants make the general test that items which go only toward maintaining the property in its present condition should be charged to repairs, while those that tend to improve the property or restore it to some extent to its original condition are classed as replacements. Ordinarily the life of the item which is installed as a repair or replacement is not taken so much into consideration. The reason is that the repair or replacement attaches itself to another item of property. We do not think of it exactly in those terms. It is possible that we might classify an item as a repair and yet it would have a considerable life period (T. 788). In the event that an engineer makes an appraisal of the property and includes the item in his reproduction new value on which depreciation [fol. 669] is allowed, I cannot say that the charging of the addition to the repair account would result in allowing for it twice. The appraisal in this respect offers no different aspects than are involved in any adjustment of values through an appraisal (T. 789). It is a matter of common experience that painting will last for quite a few years. I would charge that to repairs. I should think that when an engineer is placing reproduction new value on the property, he would take into consideration the condition of the property, which would undoubtedly involve the condition of the paint, and I would assume that he would make allowance for that in making his value. Determining the depreciation reserve on the reproduction new value and charging the painting to operating expenses annually results in making a charge each year for that paint, and also originally it was charged as an operating expense when it was put on (T. 790).

Referring to the different units of property shown on Respondent's Exhibit No. 10, I find that the commission men's, traders' and packers' pens in the cattle, sheep and hog divisions, generally speaking, have a life period shorter than buildings like the Exchange Building, barns or sheds, but I do not know that the facts would show that on the composite basis, taking all of the pen (T. 791) areas into consideration, that your life is so much shorter, as you have involved a great deal of plumbing, pavement, and structures of various kinds. The pens themselves represent a substantial proportion of the investment in property for these respective areas. From page 54 of Government

Exhibit No. 11, it appears that in the past 6½ years $4,070.53 has been written off as retirement of pens. That would indicate that unless there has been some prior major renewals, these areas are being maintained in their service-[fol. 670] able condition through the repair account (T. 792).

I did not state that if the allowance for depreciation for Respondent were to be made on the sinking fund basis that company would have to pay a higher income tax. I said that if the sinking fund method had been applied in the early stages of the income tax law, during the years of high taxation, it would have resulted in a higher tax. With the straight line method the same amount is charged annually to depreciation reserve (T. 793). Assuming that there are no material changes in the property by way of additions and retirements, whether under the sinking fund method the same charges would be made from year to year to depreciation reserve would depend upon how one is considering the sinking fund method. The sinking fund method as proposed by the Government in this case contemplates the setting up and collection from the public, rather, of a regular amount each year, which it is expected would earn an income. A sinking method as it is often discussed, and more discussed than used, is a method by which the heavier charges are thrown into the later years of the life of the property. That comes about because the annual charge is arrived at by taking each year the theoretical addition to the principal of the sinking fund, plus the theoretical accruals of interest on all prior accruals, therefore the amount of the annual charge increases from year to year. You would use the same installment allowance each year even in computing the method that I have just described, (T. 794) but the total depreciation charge as finally arrived at for each year under that method would be different, in that you bring into that charge the accumulated interest for the prior period. If a regulatory body were to adopt the sinking fund method and prescribe it for a utility, it could be [fol. 671] set up on the books all right. There would be complications in connection with the proper accounting for retirements of property. That problem would be different from what it would be under the straight line method, in that under the sinking fund method you would have to compute the accrued depreciation on retirements by the use of compound interest methods all the while. As I

understand it, the depreciation reserve would be determined here upon a composite basis rather than with respect to the different units of property, but as a foundation for that we would have the condition and the value of each unit of the property (T. 795). If one had nothing else to do, it would be entirely possible to make a sinking fund for each unit.

If we had a building worth one hundred thousand dollars and had already set up on our books a depreciation reserve of sixty thousand dollars against that value, and then the building were removed, there would be a discrepancy between the amount set aside and the cost of the building of $40,000.00. As an accountant, I would charge that item to operating expense. Even in a rate case I do not see what else one could do. The public has been using the property of the company. It is necessary in the interests of the public, as well as of the company, that the building be removed. It is a natural expense of operation. The cost of it has not yet been recovered. If the public is to pay fairly for the property, I do not see that the public should expect the stockholders to donate that for the benefit of the community. If that were charged into operating expenses and rates fixed on that basis, I do not see that it would result in charging the patrons for it every year (T. 796). If there happened to be an extraordinary charge in the year in which rates were being fixed, that would be merely a matter of adjustment. Whether this write-off of $40,000 would [fol. 672] be an unusual item would depend upon the circumstances. In some companies it might be a mere drop in the bucket. In a hundred million dollar company, for instance, a forty thousand dollar charge of that sort is only a small incident in its daily accounting, whereas in a hundred thousand dollar company a forty thousand dollar charge would be a pretty large item. I would consider it a large item for a company like Respondent (T. 797).

The maintenance method of determining the depreciation reserve is not used for the purpose of accumulating reserve. It is used to take care of depreciation and it is simply the theory of charging direct to expense replacements as they occur. I do not recall that I have ever encountered that method in practice, except in text books. I have never encountered a method whereby a certain percentage of gross income is set up to cover the items of re-

pair and depreciation. I have never found any public utility that used it (T. 798).

[fol. 673] Redirect Examination.

Referring to the building which, after being depreciated 60%, was destroyed, in fixing rates that would be simply a matter of adjustment over a period of years to give it equitable effect. It would have no affect upon the method to be followed in creating the depreciation reserve (T. 803).

I think it is entirely fair to write off depreciation reserve upon the present day value of the property, if it has increased in value. If a building which was originally worth $500,000 has been appraised and is now worth $700,000, and is bought by a second man, this latter figure would represent the actual cost to the second man (T. 804). I know of no accounting practice which would require that man to write off depreciation on less than the cost of the property to him. If the value of the property to the first man is the same as the cost of the property to the second man, I could see no reason for a different treatment with respect to depreciation. If the conditions were reversed and the property came down in value, the same principle would [fol. 674] apply. I can see no logical difference between our present day reproduction cost for the purpose of charging the public a fair return, using the same figures for the purpose of charging the public annual depreciation (T. 805). I would not think it common sense to charge the pre-war price for hay as an operating expense. I cannot see any difference between that and charging pre-war basis of wear and tear on a building. It would be obviously unfair to take a rate of return of 4% or 3% upon the value of the property and sell that to the stockholders upon the assumption that if they will invest it that by compounding it annually in the course of time they may get a 7½% return. Investors should be entitled to their 7% per annum as the years go by. It would belong to them from year to year. It would seem such a proposition is very senseless (T. 807). You could not sell securities to anybody on that basis. If a man is entitled to 7%, he is entitled to 7% this year. Perhaps the only difference between that example and the Government method of setting up depreciation reserve is that in this particular case, as I see it, there would be no amount which would be earning an income.

Even in case of your stockholders, you are assuming that he got his 3 or 4% which could be invested, but in this other case the amount which would be paid in would immediately have to be used for some other purpose; that is to say, in the making of renewals or replacements so that it would be utterly impossible for it to accumulate. It is my opinion that the depreciation reserve as set up in that manner would probably be even more grotesque than what I have said about rate of return (T. 808). In other words, although the property is being worn out at the rate of about $128,000 a year, from some sort of a charge account we will get that ten years from now instead of this year. The books of [fol. 675] the company are usually closed for all purposes at least once a year, and it is expected that they should represent the condition of the company at the end of the year. If the property were depreciating $128,000 a year, and a credit was made for the depreciation reserve account of $63,000 a year, the books would show an inflated value of the property (T. 809). In my opinion, it would probably be as logical to apply this sinking fund method to operating expense as to apply it to fixed assets, because after all there is no essential difference between assets when you come to compute the income of the corporation. They are all being worn out and consumed in the service, some sooner and some later. In all these illustrations given, the result is not only to postpone the payment to the owner of an amount which he ought to receive beyond the year in which that expense occurred, but to refuse it altogether.

If errors of any kind have occurred, either in the mere bookkeeping or in the amount of depreciation reserve set up in past years, that would not influence my opinion as to the propriety of the method to be followed in the future (T. 810). I understand that we are trying to arrive at a sound method for the accounting of the affairs of the company in the future, and if we are going to do that we ought not to use an unsound method which we think is going to be added to on this point and subtracted from on another point with the hope that we are going to find ourselves in approximately the correct position when we get through, but we ought to start off on a fundamentally sound position with a fundamentally sound theory and proceed along fundamentally sound lines. The fact that rates in the past had been excessive or deficient would not keep the Governmental

authority from fixing reasonable rates in the future. If Mr. Henrici's life figures set out in Government Exhibit [fols. 676-739] No. 12 are correct, there is nothing in the books of the company that could vary my opinion as to the amount of the depreciation reserve necessary on those particular items (T. 811). The only thing that could vary the amount of depreciation that should be set aside would be the discovery of an error in the estimated life of the particular pieces of property. I have here to start with the very definite fact that the property is wearing out to the extent of a certain number of dollars each year, and to my mind that is as simple as the A, B, C's. If the property is wearing out to that extent, obviously it must be replaced to that extent in order to keep it in serviceable condition, and if it is being replaced to that extent the public must pay for it in that same amount.

Recross-examination:

As to whether I regard a sinking fund method of depreciation exactly the same in principle as the sinking fund return, of course, no one ever heard of a sinking fund return. That was used merely to draw a comparison. I do not see as there is any comparison except that they (T. 812) both involve the use of compound interest computation, and I think it is to be assumed that the original amounts will accumulate to larger amounts in the future.

[fol. 740] Income for Rate Making Purposes

M. J. O'Malley, a witness called by respondent, after being duly sworn, testified in substance as follows:

Direct examination:

I reside in St. Joseph, Mo., and am auditor of the St. Joseph Stockyards Company and the St. Joseph Belt Railroad Company. I have supervision of accounts with full charge of the office reports and the collection thereof. [fol. 741] All the records of the company are made under my direct supervision. I am familiar with and have examined Government Exhibits 11 and 12 (T. 1080). I have prepared an exhibit similar to Government Exhibit 12. This exhibit is marked for identification Respondent's Exhibit

11. In preparing this exhibit I started with the net income as shown in Government Exhibit 12, as agreed, which is $252,929.09. I have made certain additions and deductions to this amount to produce a net operating income for rate making purposes. These additions and deductions are set forth on page 1 of this exhibit. Page 1 covers the year 1928 and page 2 covers the first six months of 1929 (T. 1081). The first item is casualty insurance refund. I have taken the amount of refund that we received for a period of five years because I thought that was fair on account of the variation in the amount from year to year. The dividends vary and the average for five years would be $5,550.43. We get this refund at various times, sometimes November or December and sometimes in February. It is generally for the previous year. This amount of $9,799.43 was received sometime during the year 1928 but I do not know the exact date. As a rule it would apply to 1927. I felt that it was a fair proposition to average these refunds over a period of years.

The amount of depreciation reserve is taken from Respondent's Exhibit 10 (T. 1082), $126,980. That was given to me by Mr. Kosters. He stated it was a compromise figure as to amount. The figure of $128,035.80 was the amount actually deducted for depreciation reserve in the year 1928 as shown by the audit.

The details of the next item, O. R. E. insurance, outside real estate insurance, are shown on page 3 of Respondent's Exhibit 11. The same is true in respect to repairs and [fol. 742] miscellaneous expense (T. 1083). I got my classification of outside real estate from Mr. Kosters. It is based upon the contentions of the respondent in this case as to the land which should be included as used and useful stockyards land. I have made no classification of my own.

The details as to fiscal agents and trustees are shown on page 3 of Respondent's Exhibit 11 and the sum is taken from the audit, page 3 of Government Exhibit 12.

The next item of taxes, real estate and personal property, are shown on sheet 4 for 1928 and sheet 5 for the first six months of 1929 (T. 1084). This follows the same classification of land as used and useful property as was given me by Mr. Kosters. Mr. Kosters gave me all the information on sheet 4 with the exception of city taxes, the last item. They come under my supervision. Park maintenance tax and real estate tax I took direct from our vouchers in the

amount of $1,215.77 (T. 1085). On page 5 of Respondent's Exhibit 11 I took the figures Mr. Kosters gave me which are shown on page 4 and made a comparison as to the rate and made the deduction which would naturally follow on the same property. He only figured the 1928 tax on the outside property but the basis was so apparent that I could follow the same system for the six months of 1929. If Mr. Kosters' figures on page 4 are correct my computation would necessarily produce correct figures for the first six months of 1929.

The item of bond interest is the same figure which was added to the net income in Government Exhibit 12 on page 3.

The amount of outside real estate depreciation of $302.75 was arrived at as follows (T. 1086): Government Exhibit 11 shows the various items that apply to Lake Avenue house, farm house, and field hay barns, and we used those [fol. 743] figures and applied our method of depreciation as applicable to them. The details are as follows: Frame farm house $174.54 at 6 per cent; brick house $275.60 at 3 per cent; water lines $55.00 at 4 per cent; total $114.96; field hay barn $3,129.84 at 6 per cent or $187.79, which makes the total of $302.75. One-half of that sum was used as the basis for the first six months of 1929. Those items are found on page 9 of respondent's Exhibit 11, under miscellaneous items, farm house $1,878, hay sheds (farm) $3,054. Those two items include all the items I have mentioned above (T. 1087). My deduction for outside real estate depreciation is the amount covering those particular buildings, which was actually deducted in the year 1928 as shown by Government Exhibit 11. Referring to page 9 of respondent's Exhibit 11 there would probably be some slight readjustment of this amount of $302.75. The proper amount would be 6 per cent of the sum of the two items as they appear on page 9 of respondent's Exhibit 11. That figure is $295.92 as against $302.75.

The details as to the items of rent and lease income appear upon page 6 of respondent's Exhibit 11 (T. 1088). I followed the same classification as to outside real estate as I explained before. The right-of-way rental is paid by the St. Joseph Belt Railroad Company. The item interest received is identical with the amount appearing on page 3

of Government Exhibit 12. The same is true of bad debts.

Pages 8 to 10, inclusive, of respondent's Exhibit 11 were prepared by Mr. Kosters before his compromise. My pages 8 to 10, inclusive, should be modified to the extent as would be apparent from an examination of respondent's Exhibit 10, which contains the compromise figures (T. 1089).

[fol. 744] Cross-examination:

Referring to the item of $9,799.43, which is the first item on page 3, of Respondent's Exhibit No. 11, I said that that was applicable to the year 1927. We received it in 1928. That is the reason I carried it as it is on the exhibit. Those refunds are all overlapping. This is the refund which accrued on the 1927 insurance (T. 1090), but was paid to the stockyards company in 1928. That would be true in the same way of the other years stated, but the refund is not always received at the same time of year. We have received a casualty insurance refund for 1928. It is shown below 1929 as $5,066.12. Our insurance policies, I think, fall due in February. Sometimes the insurance is applicable to ten months of the previous year and two months of the following year, but ordinarily we speak of it as applicable to the year in which the insurance is written. The policies are written for 12 months' periods. We pay a premium rate to the mutual insurance company, and then receive dividends from the company. If it were not a mutual company, probably we would not receive anything (T. 1091). The reason why I regard it as proper to average those refunds over a five-year period is because there is such a variation in the amounts. This large amount, for instance, of $9,799.43, was possibly paid to us out of the reserve fund that has been created by the insurance company. Compared to the other refunds it is evident that that is an unusual amount for the stockyards company to receive. There has been some variation in the premiums paid by the company annually during past years (T. 1092). I will furnish for the record the casualty insurance premium paid by the St. Joseph Stockyards Company for the years 1924 to 1928, both inclusive, being the years shown on Respondent's Exhibit No. 11, page 3.

[fol. 745] The expenses shown in the profit and loss statement for the year 1928 are taken actually in that year, and not averaged over a five-year period, but it is my idea that extraordinary items, or items of extraordinary size, should

be averaged over a period of years, and not included in any one year. That would be fair and equitable on account of the variations in the casualty insurance. As to whether the same principle should apply to any unusually large items of expense, that may have been incurred by the stockyards company in 1928, I am dealing only with casualty insurance. I would not apply the same principle to other items (T. 1093), because there is no doubt that the expense was incurred within the year. We receive the casualty insurance refund during the year. As to whether it accrued within the year, I have no means of knowing how the casualty company accrues this amount of dividends. The only reason why I regard it as fair to average these casualty insurance refunds, and not to average extraordinarily large expenses, is that we have casualty insurance, but we haven't these other imaginary items. If we did have them, I would not agree wholly that the same principle would apply, unless it had something of a nature similar to those. Then, I might consider it.

The reason the item of bank exchange $28.10, appearing on the third page of Government Exhibit No. 12, is not eliminated in any part of Respondent's Exhibit No. 11 (T. 1094), is because the item is very small, and I do not know of any concern that does not have similar charges. It seems to me that it is a very necessary expense of companies which they all have to bear. For instance, if we were to pay a farmer's charges, and he would send us a local check, we would have to pay exchange on that local check. I mean that the bank charges an exchange fee on that, and [fols. 746-765] that is one of the ways in which the item arises. Also, we might cash, as a courtesy to the farmer, a check drawn on his local bank, and that would be another way in which that item would arise.

The initials "O R E" appearing on Respondent's Exhibit No. 11, and Government Exhibit No. 12, mean "outside real estate." We have been carrying that on our books. The difference in the total amount, between the eliminations in outside real estate made by me, and those made by the auditors for the Government, is due to the difference in our opinions as to what ought to be considered used and useful property (T. 1095). I suppose that it is understood that each one of those steps of elimination is tentative and subject to final determination by someone else who will review them, and tell us what the decision will be (T. 1096).

Direct examination:

We actually received in the early part of 1929 casualty insurance refund in the amount of $5,066.12. That applies as nearly as I can allocate it to 1928 business and possibly two months of 1929. It comes pretty close to the five-year average (T. 1096).

[fol. 766] Used and Useful Property

Transit House

C. F. EMMERT, a witness called by the respondent, after being sworn, testified in substance as follows:

Direct examination:

I reside in St. Joseph, and am manager of the Farmers Union Livestock Commission (T. 1112). We simply handle the stock for the members of the different farm organizations that are with us in the business down there. We are simply a trade name. There are ten different State-wide organizations, and we are supposed to handle the livestock [fol. 767] from their members. I have been manager about eleven years. Prior to that I was in the commission business at St. Joseph. I have been at the yards there since 1900, and during all that time I was either employed by some commission firm, or was in business for myself (T. 1113). I have been continuously at the St. Joseph market since 1900, except for a few months when I was on a little farm. I was there when the Transit House was built. I am fairly familiar with it at the present time. I have an opinion as to whether or not it is necessary for the St. Joseph Stockyards Company to maintain this hotel. I think it is a great convenience for the people who come there. It would be a serious detriment to have it removed for a number of reasons. Years ago most of the stock that came to this market was shipped in cars. Now, perhaps, half of the hogs and 20% of the cattle arrive in trucks. Those trucks keep running day and night, as a rule. They try to make as many trips as they can, in order to get as much service out of their trucks as possible. It is necessary for the truck drivers to get some rest. I think that the Transit House is pretty generally filled up most of the nights when the roads

are so that the trucks can get in (T. 1114). I think that the patrons arrive mostly during the night. I am speaking mostly of truck drivers. The shipper who comes with his livestock by train gets in early in the evening, about seven, eight, or nine o'clock. Quite a good number of my patrons ship livestock by these trucks. I certainly think that the maintenance of a Transit House by the stockyards company is of benefit to the producers who patronize this market, for the one great reason of the physical location of the stockyards. It is four or five miles from the city. If the men could not get in a Transit House, or some place like that, they would have to drive clear back to town before they could get any accommodation. I would not exactly [fol. 768] know about the parking of trucks up town (T. 1115). I have noticed signs on the streets about parking, and there are, in effect in St. Joseph, regulations about parking on the street. The stockyards company has a place where these trucks can be parked over night right on the stockyards property (T. 1116).

Cross-examination:

I do not know what value has been placed on the Transit House by the appraisers who have appraised the stockyards company for rate making purposes. I do not know how much rent the stockyards company receives for the Transit House (T. 1116). I would think that if the evidence shows that the value of the Transit House, or if the Secretary of Agriculture should find the value of the Transit House, reproduction new, less depreciation, to be $100,000, and the evidence shows that the stockyards company receives only $100 per month rent, that would be a small return on a building of that value, and if the Secretary of Agriculture should allow the stockyards company a fair return of 7 or 7½ per cent on the value of its property, that rent of $100 per month probably would not equal 7½ per cent, or even 7 per cent, on the $100,000 value. As to whether the deficiency would have to be paid in the form of rates by the shippers of livestock to the St. Joseph Stockyards Company, the shippers pay certain rates, of course. I don't know how these rates are applied at all. I don't know whether the things above stated would tend to increase the rates to be paid by the shippers generally (T. 1117).

Thereupon, at the suggestion of counsel for respondent, counsel for the Government made the following statement:

In connection, Mr. Emmert, with what was said by Mr. [fol. 769] Rynder, I would like to explain to you that the St. Joseph Stockyards Company is not asking at this time any increase in its rates and charges for yarding and feeding livestock, and so forth, so far as I know. The Secretary of Agriculture is having this inquiry conducted for the purpose of determining whether the rates and charges of the St. Joseph stockyards are just and reasonable. As a result of this hearing, the Secretary of Agriculture may, under the law, do one of three things. He may possibly reduce the rates, he may possibly let them remain as they are, or may possibly increase them. I just make that explanation so that you will not misunderstand my questions.

Counsel for respondent stated that "We might add to the explanation that inasmuch as we are not asking any increase in rates, the stockyards company considers the likelihood of an increase in rates to be not at all probable" (T. 1118).

In view of the explanations that have been made, I understand that, if the Transit House and the stockyards are operated together, any deficiency there might be in the income from the rent of the Transit House, as applied to the expense and charges of carrying that piece of property, including the fair return on the value of it, would have to be paid to the stockyards company in the form of yardage and feed charges. I have not considered at all whether the extra charges of carrying the Transit House should be paid by truck-in livestock only, but I don't believe that would be the proper way. I think it ought to be spread over all the shipments. That would probably apply to a sheep man out in Wyoming, who never comes to St. Joseph, as well as to a neighboring man who ships by truck (T. 1119). I presume that whether it is usual for businesses to maintain a hotel for their customers would be determined by the loca- [fol. 770] tion of the business more than anything else. I know of no business, other than a few stockyards, which maintains a hotel for its patrons. Farmers frequently haul their grain to an elevator. I presume elevators do not maintain hotels, but that would be a different proposition altogether, because they have a commodity that need not be marketed as quickly as possible. They can take an entire

day for a truckload of grain, for instance. I presume farmers frequently haul into the produce markets (T. 1120). They haul highly perishable commodities. Fresh fruits and vegetables are not as perishable, to such considerable an extent, as cattle, hogs, and sheep. I don't know whether those who haul produce generally come in during the night. I have no information as to whether produce markets open in the morning with produce that has been hauled in during the night. I do not know of any such market that maintains a hotel for the truck drivers (T. 1121).

I presume the commercial trucker is more frequently there than the truck driver who owns the stock he hauls. The commercial truckers make regular trips into St. Joseph. Whether they come once a day depends on how the roads are, but, as a rule, they do come regularly the year around. I do not know whether they are strangers in town. I would think that the man who goes to St. Joseph regularly, night and day, the year around, ought to get to know the city (T. 1122).

I cannot recall just now any other stockyard, except St. Joseph, that maintains a hotel. Livestock is trucked into the other markets. In some of them the volume is just as great as at St. Joseph. I think that is not true of Kansas City. At Omaha it is pretty heavy. I don't know whether they have a hotel. I do not know how about Sioux City. I would think that the fact that they do not have hotels does [fol. 771] not deter the truck drivers from coming to Omaha and Sioux City (T. 1123). If the Transit House were closed, I do not think all the truck drivers would stop coming to St. Joseph. Possibly some of them would. The closing of the hotel would be quite an inconvenience, but I do not know that the producers of livestock would be injured. It would be an inconvenience to the truck drivers and to the producers, because when the producers come in with their stock they want to be at the stockyards early in the morning to see it handled, and they can get there a good deal quicker from the Transit House than from uptown. Quite a good many producers come in with their stock. I would not say that as many producers as truck drivers come in. It is a reasonable conclusion that the men who want to stop at the Transit House ought to pay a fair cost of operating that hotel, and not put it on people who don't come there and don't want to stop there (T. 1124).

Redirect examination:

I haven't any idea what the patrons of the Transit House pay. I am not qualified to answer any question about that. I wouldn't think that the patrons of the Transit House that I know about would pay from four to five dollars a day to stop there. Assuming that they would not pay enough to run the hotel and make it profitable, I am not qualified to answer whether or not the hotel should be abolished. I certainly think it is a substantial benefit to this market to have it in existence. I would dislike very much to see it abolished.

[fols. 772-774] Income for Rate Making Purposes.

Allocation of Taxes

S. F. Kosters, upon being recalled by Respondent testified in substance as follows:

Direct examination:

[fol. 775] Used and Useful Property

Transit House

I am familiar with the regulations in respect to overnight parking. It its prohibited all over the city, even in the residential district. Throughout the business district, parking limited to one hour, and those limits have recently been expanded. There is no place in the City of St. Joseph where you can leave an automobile on the street all night long. An ordinance has been in effect for a great number [fols. 776-779] of years, but only recently has it been enforced (T. 1161).

[fol. 780] Going Concern Value

Recovery of Receipts

Mr. E. N. Carroll, a witness, called by the Respondent, after being sworn testified in substance as follows:

Direct examination:

I live in St. Joseph, Missouri (T. 1172). I am Traffic Manager of the St. Joseph Stockyards Company and the

St. Joseph Belt Railway Company. My principal duties are getting receipts to the market. The job of Traffic manager would be comparable to sales manager in any other business. The principal duties are securing business. The first thing is to get the business, and of course you can only take care of it after you get it so as to hold it. I would be interested in the care which was being taken of the business, and would naturally follow along to see that the cus-
[fol. 781] tomers are kept satisfied (T. 1173). I have been in the traffic department of Respondent for 20 years, and Traffic Manager for 14 years, and during all of this time I have been actively engaged in securing or attempting to secure business for Respondent. I heard the testimony of L. R. Howson. Prior to the hearing Mr. Howson consulted me in reference to the problem of getting back the business of Respondent, in case it were assumed that it were gone. Mr. Vant, Mr. Barkley and myself conferred about it. As a result of this conference I gave Mr. Howson the composite opinion of the three of us as to the rapidity with which the business of Respondent could be regained. I told him that we estimated that we could recover the first year 25% of our business, and within five years, around 80% of our business, and we can probably reconstruct our business as it is (T. 1174) today within the period of eight years. We estimated that in Zone 1 for the first year we would secure 80%; Zone 2, 15%; and from Zone 3 a negligible amount. We estimated that out of Zone 1 we would have secured 100% of our business in five years; out of Zone 2, 80%; and out of Zone 3, 65%. Zone 1 is within a radius of 100 miles, because the first divisions of the railroads entering St. Joseph are around 100 miles. That zone would take in all of the truck business. The next zone was constructed on railroad divisions also and extended to a distance of 350 miles, which approximate the next two railroad divisions. Beyond that we considered Zone 3 (T. 1175). The opinion I gave Mr. Howson as the composite opinion of Mr. Vant, Mr. Barkley and myself is also my opinion. If Mr. Howson had relied upon my opinion, or the composite opinion I gave him, the length of time he used in recovering the business would have been three years more.

[fols. 782-787] I also gave Mr. Howson the number of cars that would be in each zone, and he figured the number of

cars that would be recovered from the percentages we gave him. I also gave him the figures from which he made his assumption of the receipts for the next four or five years, and added in the drive-in receipts and reduced them all to cars. The total cars for 1928 were 54,275 (T. 1176). For the year 1929 I have taken the actual receipts up to and inclusive of December 10th, and estimated the remaining period of the month on the same basis of receipts for last year. That is just about the way we are running. That would make a total for this year of 54,762 cars (T. 1177). The actual receipts up to December 10th was 49,992 cars, and the estimate for the balance of the month was 4,770 cars. This estimate was based on the actual receipts for a like period in 1928.

[fol. 788] Cross-examination:

I said I had been in the traffic department of the St. Joseph Stockyards for 20 years. I was not connected with any stockyards just prior to that time, but I had been employed by the Kansas City Stockyards a good many years before. My real stockyards experience as far as anything I would have to say to Mr. Howson, would extend over this 20 years with the St. Joseph Stockyards. I have never been connected with any yards except Kansas City and St. Joseph.

I was asked to give an estimate of the time it would take to reproduce the business at the St. Joseph market if it was out of existence for a year and was then brought back with the packing houses like they are today (T. 1192). I was told to assume that the packing houses and the stockyards were re-established and then we were to reproduce the business of the stockyards company from that time on. In making my estimate I did not consider whether the packing houses were in operation or not. I think the packing houses would have to keep the steam up and one thing and another to keep up their machinery, but I do not think the packing houses we have could operate without an assortment of livestock, and they couldn't get the assortment in any way other than through public markets (T. 1193). As to whether if the packing plants could not run full force they would not run at all, I do not know what they would do. I am just trying to follow you along, but I do not now know what the packers would do. I do not believe, how-

ever, that they would operate. I do not think the operation or non-operation of packers during this year would have any effect on the rate of recovery of receipts on the new stockyards. The question as to whether it would make any [fol. 789] difference whether some hundreds of thousands of head of livestock were already coming here, or whether they had all been diverted to other markets, is not anything like what I was asked to make an estimate on. If you are going on the theory that while the stockyards was out business, the packers had built up a direct buying proposition, we probabably never would get any receipts (T. 1194). I was not going on any assumption of that kind. I was going on the assumption that all livestock had ceased coming to the St. Joseph market for a year. I was asked to estimate on that.

In all my experience I never knew a big stockyards anywhere comparable to St. Joseph to close down for a year nor a month. I do not know but what maybe Chicago Stockyards did close for a period on account of the foot and mouth disease but that is so long ago I do not remember for sure. I do not know the facts concerning that (T. 1195). So far as my experience goes I have no experience whatever to draw upon as to what happens when a stockyard closes. I have no past experience of myself or anyone else known to me upon which to base an estimate of what would happen if a stockyard closed for a year.

The railroad divisions mentioned, with respect to Zones 1, 2 and 3 for the recovery of receipts, refers to the freight division on the railroads that serve this market. That also has reference to the breaking point of freight rates on livestock, such rates break around 100 miles. That is, we are grouping with Kansas City usually within 100 miles (T. 1196). The operating division of the railroad first controlled our zone and we took into consideration the rate break but the principal thing was the operating division (T. 1197). Zone 2 takes in the second and third operating division usually. Zone 3 includes all of the rest of the country.

[fol. 790] By the statement that I have no past experience of myself, or anybody else known to me upon which to base an estimate of what would happen if a stockyards would close for a year, I mean I do not know what happens when a stockyards closes nor have I known anyone else

that knew one to close. I did not mean in giving this estimate to Mr. Howson I had no knowledge and experience upon which to base the estimate. I based it upon the knowledge and experience I gained on the St. Joseph Stockyards. What I meant was that during that time I had never known a stockyards to close or knew anyone else who had had that experience (T. 1199). All my experience has been in trying to increase the receipts to an already established and going stockyards. I never undertook to get receipts to a comparatively new stockyards that had none.

There are a great many factors that can influence the incoming receipts to a market. One of the major factors is confidence of the country that the market prices are comparable with other points. For instance, if the packers operating the St. Joseph market would decide to increase the market prices 10 cents a hundred over and above those ruling at any other market, I would think that would get all the receipts there were in the territory. But I would not think that any buyer of livestock, whether it is a packer or anybody else, would deliberately go out and pay more than the market value, if they knew it (T. 1200). I was asked to make my assumption on the same continuance of the situation in respect to the buying policy which now exists. I never knew packers to increase the market price greatly to attract receipts where there is a scarcity of livestock in the territory naturally tributary to some stockyards or packing center, in order to keep their plants going, rather than to reship from other markets. Thereupon the witness was excused (T. 1201).

[fol. 791] Used and Unused Property

Transit House

R. L. Austin, a witness called by the Respondent, after being duly sworn, testified in substance as follows:

Direct examination:

I live in St. Joseph, Mo., and I am in the livestock commission business, being a member of the firm of Austin, Hamill & Hoover. I have been a member of this firm for 15 years and have been in the livestock commission business at South St. Joseph for 26 years. Prior to becoming a member of this firm I was with Prey Brothers & Cooper

for 11 years (T. 1230). I was doing practically the same type of work then that I am now doing. Counsel for Respondent explained to the witness that the Secretary of Agriculture is making an inquiry into the rates of the St. Joseph Stockyards Company, and one of the questions which has been inquired into has been the amount of property which should be included as used and useful property for stockyards purposes, and that there had been testimony in respect to whether the Transit House should be included as used and useful property. I have an opinion as to whether the Transit House is necessary at the St. Joseph Stockyards. They need a hotel down there to take care of the shippers and transient people that come to our market. It is the only place they can stay in St. Joseph, South St. Joseph, or tributary to the stockyards, that is a good place to stay. They have got all kinds of cheap rooming houses and so forth down there. I would feel that it is essential with shippers getting into the yards off of these stock trains most all times of the night, makes a place for them to go and stay, and during the past few months or years the [fols. 792-801] truck business has got to be quite an item down around the markets, and truck drivers arrive there all times of the night. It makes a place for them to go and stay and rest up (T. 1231). I would say the Transit House is absolutely run as a respectable hotel.

Cross-examination:

I would not expect to be able to rent a $100,000 hotel for $100 per month. If I found a hotel of that value renting for that amount it would look like something was wrong. The Transit House is not a hotel that can get big prices from the class of people that it deals with. I do not know the prices they usually get. A good respectable clean hotel is needed down there at the Stockyards (T. 1232). I would feel that they need a hotel as costly as the Transit House; they might not need as large a dining room, but I would think they would need fully all the sleeping rooms they have. I have not had experience in the hotel business. I am simply saying that in my opinion it is necessary for it to be a good respectable clean moderate priced hotel near the stockyards.

[fol. 802] Mr. Hermann C. Henrici, a witness formerly called by the Government and sworn, resumed his testimony in substance as follows:

Direct examination:

[fol. 803] Going Concern Value

Practicability of Operating Part of a Stockyards During Construction of Other Parts

I heard the testimony of the witness Howson relative to the impracticability of operating a part of a stockyards while other parts of the same stockyards were under construction, it being assumed that the stockyards under construction would be a reproduction of the St. Joseph Stockyards. Such operation is not only practical, but it is a common observation that stockyards are being remodeled and rebuilt and are having new additions without shutting down the stockyards. Going into more detail as to how, in a general way, the stockyards may be operated in part while being constructed, the fact is, that certain parts of the yard at the present time, during certain seasons of the year, are not (T. 1203) used. It is very evident, as noted in one of our exhibits, that grass has grown up in the pavement adjacent to a certain scale, so that it is quite evident that there would be no difficulty of building a certain portion of the yard without inconveniencing the operation of the yard in any extent whatsoever. For instance, the hog division is practically isolated from the cattle division, so far as the operation is concerned. The sheep division is practically isolated from the cattle division also. It is common knowledge that construction work can be carried on under much more difficult conditions, in a much more concentrated area, than exists in the stockyards, without inconveniencing the operation of the property. At the St. Paul market a double deck concrete hog building was constructed. In Kansas City some twenty-three or twenty-four acres of pens were destroyed by a fire several years ago, were entirely rebuilt; and in the ordinary process of the entire operation [fol. 804] of a stockyards there are many daily evidences of major items of construction which do not inconvenience the operation of the yard, nor add to the cost of construction of these particular items. Such operations would not prevent the completion of the new yard within the year

which I estimated for its construction. It would not make the cost unreasonably high (T. 1204). As to the effect on cost of constructing a yard in parts rather than conducting the operation over the entire plant simultaneously, if the construction of these yards covered a period similar to the establishment of the so-called reconstruction of the business, namely, the period of five years, the demand for labor would permit the use of non-union labor instead of the union labor as has been included in the reproduction new value of the property, and it would not necessitate the accumulation of so large a quantity of materials at one time, and no doubt would result in a reduced cost of construction. The use of non-union labor refers to a five-year period of construction. My judgment is that in an effort to construct it in one year union labor would probably have to be employed (T. 1205). Assuming for instance that the sheep division would be built and put into operation before the hog division was completed and that the period of construction of the entire yard was limited to one year, the construction of the yard during that year by parts would not increase the cost of the construction of the major divisions. Constructing the stockyards while operating in part would be much simpler than making an addition to an office building while operating. For example, the Bell Telephone Exchange in Kansas City in which is located two major automatic exchanges, has recently had seven stories added to it without the interruption of service and practically no inconvenience to the tenants, and practically no increase in costs, so far as we can determine in the cost of adding those [fol. 805] additional stories. Of course, there had to be some dismantling which had to be done, but I am talking now mainly as to the cost of construction of the new addition. Those materials, and that labor, all assembled, occupying a comparatively small area of ground, provision having to be made for the ingress and egress from the building, and in the full operation (T. 1206) of the building. As compared with the stockyards, where the area covers many acres, the problem of the stockyards construction and operation is very simple. The Bell Telephone Building to which I refer is located in the down-town section of Kansas City at 11th and Oak Streets. It is surrounded by busy streets with very little space for assembling materials and carrying on operations. The St. Joseph

Stockyards is just the reverse of that. The Bell Telephone Building was 15 stories high before the 7 stories were added and each story had to be piled on top of the one below it. In the stockyards the lay-out is horizontal rather than vertical. That makes it less difficult to operate a stockyards while constructing (T. 1208). In my opinion it would be practicable from an engineering standpoint to construct the sewers and water mains in various parts of the stockyards at different times, so that one division might be built and operating while sewers and water mains were being laid for another division.

Cross-examination:

[fol. 806] Operation of Stockyards During Construction

I never operated or built a stockyards or tried to operate one and build one at the same time. I did not state that I relied upon what has been done at St. Paul and Kansas City. I did not rely on that. My opinion has been based upon several years' observation of construction of stockyards; my experience in general construction in which I have had charge of the designing and supervision and the general knowledge as an engineer. I have observed construction work going on in every market where we have made an appraisal (T. 1210). One market was St. Paul. They were doing some construction work when we were there. Since then they have constructed a double deck hog house. That was in the nature of a substitution, replacing the old hog yard. The St. Joe Stockyards have expanded their sheep division and the hog division both since I have been coming here. The Denver yards have been substantially rebuilt in many places, major changes have been made. The Chicago yards, viaducts have been constructed, pens reconstructed, buildings built and practically the Exchange Building was completed while we were making our appraisal at the market. These things are illustrative of the type of construction which I have noticed (T. 1211). I said that if the stockyards were rebuilt in 5 years they could use non-union labor in a similar manner to which much of the construction has been done at the St. Joseph market. I am familiar generally with the labor situation in St. Joseph from my investigation. I have never hired any labor myself in St. Joseph.

My investigation showed that there was ample organized labor. I do not know what the condition is right at this moment. My investigation was made several months ago. [fol. 807] Of course it simply is a matter of announcing a large major construction program. The labor market is rather flexible. I think generally there is a turmoil in the ranks of organized labor at the present time but I do not know. At no time are they always free from turmoil. I do not know of any specific trouble they are having at this time (T. 1212). Several months ago, when we inquired, we were advised that there was an ample supply of labor. I wrote letters to various union leaders and Mr. Galbreath came to St. Joseph and interviewed those men. I cannot give you the names of the men. They were the secretaries of the unions, I think. The extent to which I personally handled the matter was writing the letters. I did not come down here but had Mr. Galbreath make that inquiry.

As to whether as a practical proposition in construction generally it is practical to wait until construction is finished before operations are started, I don't know as I would say that is the general practice. For instance, in the case of a commercial building in Kansas City, it would be in operation on the lower floors while the balance (T. 1213) of the building was being completed. I imagine there would be more instances where the property was completed before it was put into operation. So far as units are concerned the general trend is to operation after construction is entirely completed.

Redirect examination:

If I were employed to superintend the reconstruction of a stockyards similar to St. Joseph that had been destroyed, and were faced with the loss of the business of that stockyards until it could be put into operation, I would plan to operate it in part, as soon as I had certain units ready. I would make an effort to build certain portions of it in order that I could operate it before having to build the entire market, if I had business which would [fol. 808] warrant its construction (T. 1214). In reconstruction of business properties generally engineers would ordinarily make that effort. I recall the fire at the Kansas City Stockyards some years ago. Between 23 or 24 acres of their pen areas were destroyed, as I recall it.

I cannot state what percentage that was of the entire pen area. The destruction involved the cattle division. That stockyards did not cease receiving cattle while that division was being rebuilt.

Relative to the addition of seven stories to the Bell Telephone Building in Kansas City (T. 1215), I was consulting engineer for the architect.

Mr. Galbreath is one of the engineers working under my direction.

My firm of Henrici-Lowry Engineering Company does not have occasion to employ labor. We act only as consulting engineers, in connection with the designing and supervision of construction, and supervision of operation of various buildings and power plants, industrial plants and other developments. We do have occasion to observe the employment of labor and consider such employment in making our plans. In and about St. Joseph, Missouri, the union wage scale is much higher than non-union labor. That is the general condition everywhere I have operated (T. 1216).

Recross-examination:

I stated in my reconstruction program I would plan to operate a stockyards in units. I certainly would plan to operate the stockyards before the property as a whole was completed. I will explain that. In other words, if we had completed reconstruction of the Stockyards, the major portion of the sheep division, there would be no need to hold up the operation of the sheep division, until we completed the construction of the hog division. They [fol. 809] are situated quite a distance apart and the construction of the hog division would in no way interfere with the construction of the sheep division. In my estimate of a year's construction period I did not contemplate building one division at a time. I said that while there were several assumptions made previous to my answer, one of the assumptions was that if the business had been destroyed and were to be rebuilt, the business were to be rebuilt in some sort of fashion, my assumption was that I would not build the entire yards to take care of a small portion of the business. There would be no occasion to build the entire stockyards for a business which would be developed in five years hence, when you could, just as

well, occupy the time, in those five years, building the stockyards to correspond to the demands of the business (T. 1217). My original assumption was that the entire stockyards would be built uniformly throughout that year. In other words, we would construct the Exchange Building in one contract, the sewers would be installed in another contract, the pen areas would be constructed in another contract, and so on, so that the whole thing would be constructed as you go along; all going along at the same time. My assumption about operating some parts of the yards while other parts are under construction is based on the fact that there would be no interruption of the business. In other words, that the business would be just as it is now (T. 1218).

Reredirect examination:

If the owners of this property asked me to plan and sup-rintendent the reconstruction and they gave me the amount of business that had to be taken care of, 25% during the first year of operation, 80% regained in 5 years and 100% in 8 years, I would endeavor in my program of construction to build the structures sufficient to [fol. 810] take care of 25% of the business. I certainly would not go ahead and construct at one time sufficient stockyards to take care of 100% if we were only going to have 25% of it, and the balance of the yards would be constructed, anticipating reasonably the recovery of the business or the construction of the business, whichever way you want to put it. That is the construction on which I said I could use the non-union labor. The stockyards labor could be used in such construction, particularly of the pen areas and paving (T. 1219).

[fol. 811] Going Concern Value

J. O. Barkley, a witness, called by the Government, having heretofore been sworn, testified in substance as follows:

Direct examination:

I recall when we had to take care of an extraordinary number of receipts of livestock at St. Joseph right after

[fol. 812] the fire at Kansas City. The provision we made for taking care of these additional receipts was that we constructed some temporary pens, about 5 acres. We commandered the entire shipping division, or traders' division, for the handling of the commercial cattle. The temporary pens were constructed on the northwest part of the cattle division (T. 1223). A part of them was where the packers' holding pens now are, and a part where the present cattle scales are located. We smply used pens there and held them, and as we got rid of some of our cattle by sale, after they passed over the scale, we would work them back up as near the sales division as we could. A good many of them were put there from the docks. Those temporary pens were simply board construction with ordinary gates and alleys. It took us about a week to build those 5 acres of pens. We used them until the Kansas City Stock Yards could rebuild. I would say that was several months. I do not recall just exactly the time, but we had a great many cattle that ordinarily went to Kansas City for quite a period on account of that fire and their reconstruction (T. 1224). I think that our receipts during that time ran up to something like 15,000 a day, as I recall it, or about 50% over our capacity at that time. It has been a good while ago, and I have not had occasion to refresh myself on that particular thing. I know that we were congested to the last word in the handling of our cattle, and we took care of them the best we could.

Cross-examination:

I do not recall the exact year of that fire. I think it was 1916 or 1917. These temporary pens were not comparable to the permanent facilities which the stockyard company maintains for the handling of cattle (T. 1225). There was no paving, sewers, or water. They were simply [fols. 813 & 814] holding pens to be used temporarily until the rush was over. They were used in conjunction with our regular layout. As soon as our other pens were emptied we would move the stock into them.

[fol. 815] Surrebuttal Testimony of Respondent

S. F. KOSTERS was recalled for further examination by respondent and testified in substance as follows:

Direct examination:

Used and Useful Property

Sheep Feed Lots

I have been asked to determine certain facts with refference to the yearbook, which is Respondent's Exhibit 9 (T. 1249).

Referring to Respondent's Exhibit No. 9, page 14, the total yearly receipts, I am now prepared to say that these receipts include all receipts to the yards, whether they be direct shipments or otherwise.

Referring to page 15, Total Yearly Shipments, are only those shipments which leave the yards by rail, no drive or truck shipments being included.

Referring to page 16, the item "Driven out of yards to country" includes the livestock driven out whether it be driven to the country or to feed lots, or where not.

In addition to that information I was asked to ascertain whether or not the packers ever bought directly from the feed lot sheep which would not be recorded as being driven out of the stockyards. I am informed that this case never happens, that all livestock bought by the packers in the feed lots at the yards are handled through the yards. And further, I was asked to determine what per cent of the feed lot receipts are received by direct shipment. So far it has been impossible to determine this. It would entail a great deal of detail work, as the only source of information would be to take the daily bulletins for the year and go (T. 1250) clear back through each [fol. 816] bulletin. If it is still desired it could be furnished, but not on any short notice.

I think the discrepancy between the figures given by Mr. Barkley and those shown in the yearbook as to livestock which went to the feed lots is apparent. The figure which appears under the item "Driven out of yards to the country," under the column of sheep, for the total of

1928, which is 198,460, is practically all covered by those that go to the feed lots. Mr. Barkley testified that there were on feed during the year 1928 in those same feed lots some 247,000, I believe, which makes a difference in round numbers of 50,000 sheep. I think it is apparent that this difference is accounted for in the fact that the feeders had on hand at the beginning of that particular period that 50,000 sheep, or thereabouts, and might be accounted for somewhat, in round numbers, I think that checks closely, would be an apparent check, I don't know the actual figures and am not qualified to say exactly where the discrepancy occurs, but that seems reasonable.

Going Concern Value

Operation During Construction

I heard the testimony of Mr. Howson and Mr. Henrici on the question of construction of the St. Joseph Stock Yards Company under a reproduction new basis, with and without operation going on at the same time (T. 1251). I have an opinion on that question.

It is my opinion that, first of all, the construction period of one year for the reconstruction of a property of that size has been drawn down to a point where you are limited in your construction operations, in your construction program rather, to a very intensified period of construction. It would be impossible, in my mind, to shorten that period at all, and further, the period would be so crammed full [fol. 817] of construction that it would be impossible to carry on any operations to any extent which would be appreciable. A great many things underlying that idea—if I might explain from the beginning, when I first gave consideration to the subject of a construction period I analyzed it from the standpoint of operations during construction, and I am frank to say that my first ideas were along the lines of a two-year period rather than a one-year period. I then obtained information from the Government, that they were contending a one-year construction period in their reconstructive analysis, and I gav- it further consideration. I went into every phase of it I thought was possible (T. 1252), outlined tentatively a construction program, outlined the matter of how the work would be carried on, assumed the number of con-

tracts which would be let, talked to the contractors who would naturally in the course of events be the bidders, and probably some of them the successful bidders on such contracts, and got their ideas of what they would be able to do under such tentative contracts, and knowing in general the possibilities in connection with stockyards construction, I finally have concluded that with very intensive operations, or rather intensive construction operations, that it would be possible, without any excessive cost which would be noticeable, to complete the construction of the property in one year's time. That was based on the assumption that all parts or units of the construction would be carried on practically simultaneously from the first date of the construction to the last date. In other words, I mean by that that no unit would be finished ahead of another unit, that they must all work hand in hand, arriving at the ultimate point of completion on approximately the same date.

I heard what Mr. Henrici had to say with respect to the use of the so-called stockyards labor instead of union [fol. 818] scale labor (T. 1253). If we consider a 5-year construction period, it would be physically possible to use so-called yard labor, but it would not be practical business. I don't believe that contracts of that size, or work of that size, would be tolerated to be done in a highly organized community by so-called "scab labor." The present labor situation in respect to organized labor at St. Joseph is as follows:

During the last three or four or five years, I don't remember just when the original movement was agitated, the labor situation in St. Joseph has been more or less in a turmoil there, due to the efforts of organized labor. A few years ago there were very few building trades well organized in St. Joseph. If my memory serves me right, there were only three that were considered fully established. At the present time the Labor Trades Council has organized to such a point that it is practically impossible to carry on operations unless done under the supervision of the Labor Trades Council. There are instances where non-union labor is employed, but that does not mean that that is comparable with the non-union labor which we employ in the yards, because that particular non-union labor which is employed on construction is paid the same

hourly wages as the labor organizations demand for their own members (T. 1254).

I have full knowledge of the facts as to whether yard labor has been used for new construction during the period in which I have been connected with the yards, some 11 years. To my intimate knowledge there has been practically no construction, or so-called construction work, carried on by the so-called yard labor. In fact it is our policy in all work which amounts to any sum of significance to contract the work. When the work is contracted, it is either done by union men or men who are obtaining union wages. I would say that on a whole, the work done by [fol. 819] so-called yard labor would be less than 1%. It would be negligible. I do not include in that, however, the expenditures in the item of maintenance. We necessarily have to keep a maintenance crew in existence at all times, and there is a considerable expenditure for maintenance, but it is not comparable to an expansion, or construction, program at all (T. 1255).

Cross-examination:

I could not say now what we would do in the future with respect to building new pens in the old southern cattle dead line, by union or nonunion labor. I was giving my experience in the past. My memory is not positive as to whether the Armour holding pens in the hog yards were built by union labor or not. I think the general work in the new construction of the truck cattle division was to let to contract. That was a result of the new construction, but if my memory serves me right, I believe in order to facilitate matters while the other pens were being torn down, and possibly obtaining some salvage from the existing pens, our own force was used in hauling that salvage and erecting it in that little block of pens which has been mentioned. If we have a certain carload pen in the cattle division and decide to divide it into two half-carload pens, that is merely a daily routine of operation (T. 1256). I would not consider that extension work because that fence line may exist there for a month, and then the pen may be thrown back into a carload pen, or it may be divided some more, depending upon what the future requirements might be. It is evident that it would be impossible to let a contract for $35 or $50. I do not know that the policy

of the stockyard company has ever been definitely established as to what work it contracts and what it does by its own labor. It has been the practice that practically all of our work, for which a request and estimate is re- [fol. 820] quired, that is, any expenditure over $500, has been let to contract. If the yard company desired to add 10 pens, for instance, to the sheep division, physically they could build them with yard labor, and there is no legal prevention (T. 1257). I did not say that we could not use our own labor to build extensions. I said that in a job comparable to the size of the one under consideration, it would not be practical to use it. I mean a job of the magnitude of rebuilding the entire stockyard in five years, or any period (T. 1258).

The records of our completed construction programs, or rather our request and estimate programs, are kept in my office. The accounting system, after the completion of one of these jobs, accounts for the expenditure—that is, to where the charge has been allocated, and those records are kept in my office. I designate to which account this work shall be charged, and on any items that are subject to my decision, I charge it either to new construction, replacement, or maintenance. Of those items, the general maintenance items do not come under my supervision. They are charged on a going work order project, which is a maintenance work order at all times, and do not come under my supervision. The master mechanic, or the carpenter foreman, charges the general items of maintenance which occur from day to day, directly to a work order project, which is the maintenance account. What comes under my supervision would be items of material significance. A five-dollar repair bill does not come to me, but if we are doing a job under a request and estimate, for example, which amounts to $500 or more (T. 1259), the distribution would come to me for accounting purposes. A small item of replacement, like putting in a new post, would be handled as repairs to yard structures.

Whereupon the witness was excused (T. 1260).

Thereupon the hearing was adjourned sine die.

The foregoing, together with exhibits included therein, either physically or by reference, is a fair and satisfactory abstract of the evidence introduced at the above entitled hearing. It is understood that in all cases where an objection was made and overruled that an exception was preserved whether the exception is shown in this abstract or not.

Elton L. Marshall, Solicitor, United States Department of Agriculture; J. S. Bohannan, Assistant to the Solicitor, Attorneys for the Government. Ross Dean Rynder, William N. Strack, Attorneys for Respondent.

[fols. 822-840] UNITED STATES OF AMERICA:

BEFORE THE SECRETARY OF AGRICULTURE, BUREAU OF ANIMAL INDUSTRY.

Docket No. 298

In re SECRETARY OF AGRICULTURE

vs.

ST. JOSEPH STOCK YARDS COMPANY, Respondent

Abstract of Record

Rehearing Held at St. Joseph, Mo., January 10 to February 16, 1933

[fol. 841] The following is a copy of the order reopening the above entitled proceeding and setting it down for further hearing.

(Caption Omitted)

ORDER REOPENING PROCEEDING, ETC.

This docket was instituted by an order of inquiry and notice of hearing issued by the Acting Secretary of Agriculture on October 9, 1929, a copy of which was duly served upon respondent. Pursuant thereto a hearing was held beginning on December 2, and ending on December 17, 1929. Respondent was present by counsel throughout the hearing. Oral argument was had before the Acting Secretary on May 13th and 14th, 1930, and respondent submitted a brief.

On February 11, 1931, respondent filed a petition in this proceeding alleging certain general economic changes and, [fol. 842] in detail, the particular effect of such changes upon respondent's business. The petition prayed that an order be entered reopening the proceeding and setting it down for further hearing on the matters stated in the petition.

On July 20, 1931, the Secretary of Agriculture issued an order denying respondent's petition for rehearing; prescribing a schedule of maximum rates and charges and ordering that respondent make no charge for any stockyard service, rendered by it, in excess of the charge prescribed therefor in said schedule.

Thereupon, respondent filed in the District Court for the Western District of Missouri a bill alleging, among other things, that the order of the Acting Secretary, aforesaid, in denying respondent a rehearing and in prescribing a schedule of maximum rates based on the record made at the hearing in December, 1929, and without consideration of the changes alleged in respondent's petition to have occurred since the hearing, denied to respondent a full hearing and, therefore, constituted a taking of respondent's property without due process of law. The bill prayed injunctions both temporary and permanent against the enforcement of the aforesaid order of the Acting Secretary.

A temporary injunction was issued in accordance with the prayer of the bill and, after a hearing at which the Court received evidence in support of the allegations respecting changed economic conditions, the injunction was made permanent, it being the opinion of the Court that the Acting Secretary erred in denying the prayer of respondent's petition for a rehearing. The Court based its opinion in this regard upon the decision of the Supreme Court of the United States in the case of Atchison, Topeka and Santa Fe Railway Company v. United States, 284 U. S. 248, decided January 4, 1932.

[fol. 843] In view of the above mentioned decisions, the Secretary of Agriculture is of opinion that it is his duty, under the law, to reopen this docket and hold a rehearing to the end that all parties may be given opportunity to present such evidence of changes, both general and particular, which have occurred since the year 1929 as may be material to the issues raised by the order of inquiry herein;

and also the end that all parties may have opportunity to present such other evidence as may be material to said issues; and further to the end that a general inquiry may be had into the reasonableness and lawfulness of each and every rate and charge, and each and every rule and regulation affecting any rate or charge stated in any and all tariffs or schedules of rates and charges filed by respondent and now in effect for stockyard services rendered by it at the St. Joseph Stockyards, South St. Joseph, Missouri, wherefore,

It is ordered that the aforesaid order of the Acting Secretary of Agriculture entered in this docket on July 20, 1931, be and the same hereby is vacated and set aside; and that this docket be and the same hereby is reopened.

It is further ordered that a supplemental hearing herein be held before an examiner designated by the Secretary of Agriculture, in the Federal Building at St. Joseph, Mo., beginning on the 28th day of November, 1932, at 10:00 A. M., or as soon thereafter as the parties may be heard and continuing until such hearing is completed, which said hearing shall be also a general inquiry into the reasonableness and lawfulness of each and every rate and charge, and each and every rule and regulation affecting any rate or charge stated in any and all schedules of rates and charges filed by respondent, and in effect at the time of said hearing, for stockyard services rendered by respondent at the St. Joseph Stockyards, South St. Joseph, Missouri; that at such hearing all parties shall have the right to [fol. 844] introduce further evidence competent and material to the issues raised by the aforesaid order of inquiry herein and shall also have the right to introduce evidence competent and material to the issue of the reasonableness and lawfulness of each and every rate and charge, and each and every rule and regulation affecting any rate or charge stated in any and all schedules of rates and charges filed by respondent, and in effect at the time of said hearing, for stockyard services rendered by respondent as aforesaid; and that the record heretofore made in this docket, together with all the evidence introduced at said hearing, shall constitute the record before the Secretary of Agriculture in this proceeding.

In witness whereof, the Secretary of Agriculture has hereunto set his hand and caused the official seal of the

Department of Agriculture to be affixed hereto in the City of Washington, this 19th day of July, 1932.

Arthur M. Hyde, Secretary of Agriculture.

[Official Seal.]

[fol. 845]

Abstract of Evidence

Evidence Offered by Government

Pursuant to the above order for rehearing a hearing therein specified began in St. Joseph, Missouri, on January 10, 1933, before an Examiner of the Department of Agriculture. The Government and the respondent were present by counsel.

Respondent's Tariffs

The Government introduced in evidence, without objection, as Government Exhibit No. 101, Respondent's Tariff No. 5 which became effective October 10, 1929, and Supplements 1 to 10, inclusive. Respondent's Tariff No. 5 and Supplement No. 10 thereto contain rates which are now in effect at the St. Joseph Stock Yards, the reasonableness of which is the subject of the inquiry. The rates and charges as set out in Tariff No. 5 and Supplement No. 10 thereto are as follows:

Government Exhibit No. 101

Subject:	Item No.	Application and Charges
Yardage Including the Privilege of the Market	1	Cattle.....35c per head Calves, 400 pounds or under (Note 1)....25c per head Hogs (Note 1).....12c per head Sheep and Goats.....8c per head Horses and Mules.....35c per head For the use of special facilities a charge, in addition to the regular yardage charge, will be assessed against all live stock received at these yards in vehicles, such as automobiles, trucks and wagons. Horses and Mules.....5c per head Cattle.....5c per head Calves.....2c per head Hogs.....2c per head Sheep and Goats.....2c per head The above applies on all animals received at this market, including direct consignments for packers or others, and through shipments ordered weighed. Live stock forwarded or driven to country from yard, without change of ownership or being weighed, yardage will be waived. Live stock resold in commission division, one-half the above rates additional will be collected. Note 1: Maximum yardage charge per car: Calves, $20.00; Hogs, $15.00.

[fol. 846]

GOVERNMENT EXHIBIT No. 101—Continued

Subject:	Item No.	Application and Charges
Feed and Bedding	2	Prairie Hay (Note 1.).....$1.10 per cwt. Alfalfa Hay (Note 1).....$1.50 per cwt. Bedding (Straw or Hay)..... .60 per bale R Corn..... .75 per bu. meas. Oats..... .90 per bu. meas. Note No. 1—Hay in ton lots fed by purchaser $2.00 per ton less. Note No. 2—When live stock is fed and watered in car, charge of $1.00 per deck will be made in addition to regular charge for feed. Note No. 3—When other feed than the above mentioned is requested, it will be furnished if obtainable, by special arrangement. R Indicates Reduction.
Dipping or Spraying	3	All dipping or spraying of live stock is subject to supervision and regulation of the Bureau of Animal Industry of the United States Department of Agriculture, or the Missouri State Board of Agriculture. This Company is not responsible for loss or damage to live stock occasioned by, or resulting from dipping or spraying. The Stock Yards Company furnishes the facilities, the dip and the labor. Charges as follows: Cattle.....35c per head, minimum $35.00 (See Note No. 1) Calves.....15c per head, minimum $35.00 (See Note No. 1) Hogs..... 5c per head. R Sheep or Goats..... 5c per head, minimum $ .8.00 (See Note No. 2) Note No. 1: Minimum charge will not apply to each owner when two or more dip 100 head or more of cattle at one time, or 234 head or more of calves at one time. Note No. 2: Minimum charge will not apply when two or more owners dip 160 head or more at one time. R Indicates Reduction.
[fol. 847]		
Hog Immunization Plant	4	Use of facilities for Vaccinating Hogs....10c per head Note: This Company accepts no responsibility for damage or loss of animals in process of vaccination. Owners will make their own arrangements with Deputy State Veterinarian for serum and veterinarian service.
Cattle Testing Barn	5	Cattle tested for Tuberculosis and other diseases: Use of specially equipped barns, including feed, bedding and water.....$1.00 per head This Company will not be responsible for damage to, or loss of stock moving to or from testing barn, or in process of testing, or in placing animals in stanchions.
	6	Whenever it is necessary to clean and disinfect any portion of this Company's pens by reason of the movement in or through the yard of live stock infected with contagious disease, the owner of such infected live stock will be required to pay for disinfecting as follows:

GOVERNMENT EXHIBIT No. 101—Continued

Subject:	Item No.	Application and Charges
Cleaning and Disinfecting		Single Pens.....$2.50 Double Pens..... 4.00 Chutes..... 2.50 Alleys—(Same ratio as pens).....37c per 100 sq. ft. Cleaning and disinfecting wagons and small trucks.....75c each Cleaning and disinfecting trucks (2 tons and over).....$1.00 each
Miscellaneous	7	Partitions and troughs for cars, papering or slatting cars, or other special service will be provided under special arrangements. Note: Owners of live stock may furnish their own material and labor for the above and no charge will be made.
Bedded and Shelter Pens	8	Sec. A.—Bedded pens for hogs, $1.00 per carload pen per night. Bedded pens for hogs 50c per half carload pen per night. (Note 1 and 2) Sec. B.—Bedded pens for hogs, Truck division, 15c per pen per night. (Note 1 and 2) Sec. C.—Shelter pens for cattle, 10c per head, calves 5c per head, each 24 hours; $2.00 minimum each pen. (Note 1) Note No. 1—No hogs will be put in bedded pens, or cattle in shelter pens, unless so ordered by owners or their agents. Note No. 2—These charges apply only on hog pens permanently bedded during winter season. When such pens are in use, other pens will be bedded at the discretion of the Stock Yards Company and regular prices for bedding will be charged in accordance with Item 2H. Reissue—Effective January 12, 1931.
Special Sale Barn	9	Cattle..... 35c per head yardage A Cattle (Note 1).....$1.00 per head stall Cattle.....$1.00 per head ring fee Hogs..... 12c per head yardage Hogs..... 50c per head ring fee Hogs..... 35c per pen per day Feed furnished at regular rates. All stock while in the Pavilion or Barn will be at risk and care of owner. Note: Limited to four days; 50c per head per day for each additional day. A Indicates Advance.
Special Services	10	R Special services in the handling of live stock, requested by the owner, not otherwise provided for, will be charged for under special agreement. R On special request at the general office of the St. Joseph Stock Yards Company, written permission (which must be secured in advance) will be given to weigh shipments of live stock on through billing passing through this market (not offered for sale) and which the owner or agent desires to have weighed in carload lots. A charge of $2.00 per car will be

[fol. 848]

GOVERNMENT EXHIBIT No. 101—Continued

Subject:	Item No.	Application and Charges
		made for the service, the owner or agent to deliver the stock to the scales and take it from the scales. Provided no sale is made and weights so secured are in no way used in connection with the sale of stock. R Reduction.
Feed Lots and Sheds	12	This Company will furnish, upon reasonable request, feed lots and suitable sheds for the holding and fattening of live stock (apart from its regular facilities provided for the yarding and feeding of live stock for immediate sale), the feeding and care to be the sole responsibility of the owner of such live stock. For such facilities the following charges will be made: Sheep Feeding..... 5c per head Hog Feeding..... 5c per head Cattle Feeding, where land only is furnished.....15c per head and where sheds and other inclosures are furnished.....35c per head This charge is in addition to any charges for yardage and feeding of live stock offered for sale at this company's stock yards. Reissue—Effective March 24, 1931.

[fols. 849–851]

No.	Rules
1	No person, firm or corporation shall be permitted to solicit business in any of the roads, driveways or docks of this Company, where live stock is being handled, since solicitation of business at such places tends to interfere with the proper and orderly conduct of the business of this Company. Any person, firm or corporation violating any of the provisions of this Rule will be denied the privileges of the Yards, treated as a trespasser, and dealt with accordingly.
2	Any owners or shippers of live stock to these yards, who desire to handle and sell their own stock without the assistance of commission men or dealers, will be provided with suitable pens and given service equal to that furnished for stock handled through any other agency, and at the same rates for feed and service. This company may require payment of all yardage, freight, feed and other charges in advance of delivery of any live stock handled in this manner.
3	Any firm, corporation or individual by themselves or their employees, detected using unfair, dishonest or fraudulent practices will be denied the privileges of these stock yards, treated as a trespasser and dealt with accordingly.
4	All traders handling cattle (buying and selling) in these yards will be assigned pen or pens, in which the traders must handle their cattle. Traders moving cattle from assigned pens to sale division (for consigned resale only excepted) will have pen assignment cancelled and they will be denied the privilege of the yards.

[fol. 852] Used and Useful Property

MR. CHRISTENSEN, a witness called by the Government, being first duly sworn, testified in substance as follows:

Direct examination:

I am the same person who testified at the prior hearing in respect to the facilities of respondent in the service which it rendered and the used and useful property which it has. [fol. 853] Since then I have gone over that testimony, having read it over within the last day or so, and I am familiar with it (T. 59).

Since that hearing and prior to the opening of this hearing I have made a careful study and survey of conditions as they now exist at the St. Joseph Stock Yards. I have gone into and carefully examined all of the things concerning which I made a report at the previous hearing, with the idea of noting any change in the conditions at the yards or any other factors affecting the services and facilities of respondent.

In the prior hearing my report consisted of Government Exhibit Nos. 5-A, 5-B, 5-C, and 5-D. That hearing was held in the latter part of 1929 (T. 60). Since that time and continuously up to this time I have been engaged in the analysis, inspection and classification of stockyard facilities and services. I have worked and made studies similar to the one I previously made at St. Joseph Stock Yards, at Denver, Kansas City, National Stockyards, Illinois, Sioux City, Iowa, and Omaha, and made a partial report of the facilities and services at the Wichita Union Stockyards. I have appeared and testified at all these places except Sioux City and Wichita.

The nature of these studies in a general way is very similar to the studies I previously made and testified to at St. Joseph. Since testifying previously I have visited the St. Joseph Stock Yards and again made an inspection and inquiry as to the current method of conducting services and the uses of the facilities (T. 61).

I was in St. Joseph for the purpose of making a study of respondent's yards from August 1 to 15, 1927, and from August 20 to September 9, 1927. I was in St. Joseph on July 16, 1929, and from August 21 to 28, inclusive, 1929, and from November 25 to December 18, inclusive, 1929.

[fols. 854-865] I was in St. Joseph July 28 to August 12, 1932, October 11 to 12, 1932 (about a day and a half), and on October 17, 1932. I arrived in St. Joseph January 7, 1933, and have again visited the stockyards several times in the meantime.

In gathering the information and data, I followed approximately the same general procedure which I used in my original report. The last survey was made quite largely in connection with Mr. Black, Superintendent of the stockyards, not only in going over the property, but in conferring with him as to any changes which have been made, all of which records were verified by a personal inspection. I had no one assisting me in this work except in pointing out different areas for the purpose (T. 62) of computing the areas, Mr. Schramm assisting me in locating some of the operating units, etc.

[fol. 866] Feedlots

Item No. 6 of Government Exhibit No. 107-A is that portion of the O'Connell Feedlot located in Tract A. It is used in connection with other areas by the O'Connell Feeding Company for feeding and fattening its own livestock. That area is allotted to the O'Connell Feeding Company for feeding livestock. It is apart from the property operated by the Stock Yards Company as a public market (T. 81). Mr. O'Connell will keep his own livestock and under item 12-A of the Stock Yards Company's tariff he may also feed livestock for other persons with whom he makes con-
[fol. 867] tracts to feed and fatten livestock. That tract of land was formerly included in land leased to the O'Connell Feeding Company but the lease has been allowed to expire and for the use of the land he is now charged on a per head basis. The per head basis takes the place of the rental basis. The compensation now received by the Stock Yards Company for the use of that property is arrived at on a per head basis instead of a monthly rental basis. The charge for that is provided for in Item 12-A of respondent's tariff. As I understand it, the O'Connell Feeding Company, or other feeding companies operating under similar circumstances collect this rental from other persons for whom they may feed livestock, and either turn it over to the Stock Yards Company or absorb it. Under certain circumstances

it is the practice of some of these feeding companies to absorb the per head charge of the stockyards referred to in Item 12 of the Stock Yards Company's tariff (T. 82). I do not know whether O'Connell feeds only his own livestock or livestock of others. I did not make any inquiry as to that. In a general way, by inquiry and gathering information in regard to the operation of feedlots under Item 12-A of the tariff, I was informed that the persons to whom the lots are assigned have the privilege of feeding for other owners. Frequently livestock comes to market and it is not fat and ready for slaughter. These feeding companies, especially in the case of lambs, will probably buy the lambs or they may feed them for the original owners until they are ready for the market. They are removed from the stockyards to these feedlots, which are separate and apart from the stockyards where livestock is held for sale and fed on a contract basis. The rate charged by the operators of these feedlots is the cost of feeding plus $5.00 per ton or some agreed basis along that line. When the livestock is finally ready for market it will be brought back to the [fols. 868-880] stockyards, that is, back to that section of the property in which livestock is held for sale, and there the sale will be consummated and the livestock weighed and sold (T. 83). This process of feeding or fattening is comparable to the ordinary feeding and fattening of livestock in outside feedlots the country over (T. 84). I do not consider that such an operation is necessary in the regular marketing of the livestock. Livestock is not held for sale in these feedlots. It is removed from the market and it is a different function entirely. It is a feeding function under the operating control of persons to whom these facilities are allotted or who are given permission to operate in these feedlots. I do not consider it is necessary for the Stock Yards Company in its capacity of operating a market place to have facilities such as these. I think they could market any livestock which came to the stockyards for immediate sale without the use of these outside feedlots. I think both the land and structures are not used and useful in connection with the rendition of stockyards services for the reason that they are not used as a market for livestock. They are removed from the property operated by the stockyards for holding livestock for sale and it is an independent oper-

ation outside of the stockyards, just the same as some farm (T. 85) feeding operation in the vicinity of the stockyards would be operated (T. 86).

[fol. 881] Item No. 23 is the space lying between the so-called Nichols feedlot and the so-called Davis feedlots in the north portion of what was formerly a part of the Southern cattle division. It is just a dead space which is not being used for any purpose. The south end and east end are closed and there would be no way to go through from the stockyards to the old Southern cattle dock on the north. The portion running east and west, north of the Nichols (T. 121) feed shed, is closed at both ends and is simply a dead space used for no purpose. The north and south portion is also unused and overgrown with tall weeds. It is not used and useful in connection with the rendition of stockyard services for which rates are charged by respondent.

Item No. 24 covers the feedlots described in my previous report which were leased to various persons and firms engaged in the feeding of their own livestock and possibly livestock which they contract to feed for others. They are located in tract "C" in what was formerly known as the Southern cattle division. This area was discontinued as a part of the stockyards in which livestock is held for sale [fol. 882] soon after the shipment of Southern cattle was prohibited by law. This area was then rearranged and leased to independent livestock feeders (T. 122). These feedlots are located north of the hay barns, west of the sheep division and the company's stable, and south of the old Southern cattle dock and railroad right-of-way of the Belt Railway, and east of Packers Avenue and part of the material yards. They are entirely outside of the section of the yards now used for holding livestock for immediate sale. These feedlots are operated by several persons. The leases which formerly covered these feedlots have expired and in lieu thereof respondent has inserted in its schedule of rates and charges a per head basis for determining its compensation for the use of these feedlots. Those charges are paid by the firms and persons to whom the feedlots are allocated. Sheep and cattle are principally handled; in these particular feedlots, there are both sheep and cattle. Mr. Nichols and Mr. Davis feed cattle principally (T. 123) while Swift and Company and Rountree feed lambs prin-

cipally. The people who operate these feedlots usually buy the lambs at the stockyards and remove them to these feedlots where they are fed and held until they are fattened and in condition for sale to the packers as fat animals. They are then brought back into the stockyards, weighed, sold and delivered in the yards maintained as a public market. The situation in these feedlots is identical to the situation where a farmer bought a carload of sheep and took them out to a feedlot in the country some two or three miles away for the purpose of fattening and returning them to the market. Livestock removed from the stockyards to these feedlots adjacent to a stockyards are accounted the same as livestock driven to the country. For all practical purposes they are removed from the market and the situation would be the same as if they were taken out to the [fols. 883-885] farm and fed (T. 124). In my opinion these feedlots are not essential to the operation of respondent's stockyards in connection with its function as a market place. The market facilities of the stockyards function twice in connection with feedlots, once before these animals are taken to the feedlots, and again when they are returned. The Stock Yards Company has no jurisdiction over the livestock while they are out of the yards, and in the ossession of the feeders. These feedlots are not used and useful in connection with the rendition of stockyard services. They are used in connection with the private feeding business of the people who operate them, who do not buy their feed from the stockyards, but operate these yards for their own compensation and profit. I do not understand that the Stock Yards Company sells the feed used by these operators in the same way that they sell feed to parties who consign livestock for sale at the market. I understand that these feeders can buy their feed and do buy it from any source which they see fit, and they sell the feed again to any person with whom they may contract to feed livestock on a cost basis plus a certain amount (T. 125), say $5.00 per ton for the feed fed, and in some instances they also absorb the so-called yardage charge which must be paid to the Stock Yards Company. The people who have the assignment of these pens contract with other people to feed livestock. By that I mean the operators of these feedlots to whom have been allocated certain feedlots by respondent (T. 126).

[fol. 886] Item No. 33 is a parcel of land lying south of Armour and Company's plant indicated on the map as Hammond Packing Company and north of the Terminal Railway right-of-way. It lies principally west of Packers Avenue and east of the Terminal Railway property. It is used as a feedlot and is part of the property occupied and used by the O'Connell Feeding Company for feeding livestock. Its use was described when I was describing the operations of the O'Connell Feeding Company. In my opinion it is not used and useful for stockyard services because it is operated by an independent feeding company in connection with its own business, separated and removed from the stockyards in which livestock is held for sale. It is not operated as a public market where livestock is bought and sold (T. 135). It is my understanding that respondent is compensated on a per head basis as outlined in Item 12-A [fol. 887] of the schedule of rates and charges and formerly this was provided for on a rental basis. The same situation exists that exists in respect to other feedlots (T. 136).

[fol. 888] Item No. 42 includes various items listed. The land is occupied by buildings and equipment leased to Henry Rockhold and operated by him principally as feedlots. A copy of the lease is inserted in my report on pages 162, 163, and 164 of Government Exhibit No. 108 (T. 144). The property on which the buildings are located is north and west of the Belt Railway property and east and south of the land described as Item No. 41. Under the lease, Henry Rockhold has the exclusive use of the equipment and of cer- [fols. 889 & 890] tain buildings located on this land. These leased properties, equipment, and facilities, and certain buildings are enumerated in the list attached to and made a part of the lease. These items are set out and described in Government Exhibit No. 107-A. Mr. Rockhold is carrying on a feeding business, feeding lambs and shearing them (T. 145). The land and facilities covered by Item No. 42 are not used and useful in connection with the rendition of stockyard services for which rates are charged by respondent because the operation of a feedlot outside of the stockyards and controlled by lessees is not in my opinion a stockyard service (T. 146).

[fol. 891] Item No. 48 consists of feedlots located in Tract No. 14. They are within the city limits located east of and separated from the stockyards by the railroad tracks and

the rights-of-way of several railroads. They are immediately south of Illinois Avenue. The entrance adjoins Illinois Avenue, but there are other parcels of land intervening between the feedlots and Illinois Avenue. They are immediately west of Lake Avenue (T. 150). These feedlots consist principally of what was formerly the horse and mule division of the stockyards. Since that division has been abandoned in that location, all of the barns and improvements formerly constituting the horse and mule market have been converted into so-called feedlots and are operated by Stevens and Williams, an independent feeding company, feeding principally sheep but handling some cattle. The operation of this feedlot is similar to the operations which I have described with respect to other feedlots previously in my testimony. Respondent obtains compensation in the same way as I have previously described under Item 12-A of the tariff (T. 151). There was a fire over there and some of the property was destroyed and rebuilt. It was formerly a shed and a brick horse barn, and I find that it was rebuilt with a steel and brick structure. That is the building now occupied by Stevens and Williams partly as an office and for feeding livestock. Under this item I have included the entrance which is on Lot 6, which connects the Stevens and [fol. 892] Williams feedlots, or the section formerly known as the horse and mule division, with Illinois Avenue. The tract of land covered by Item No. 48 and the improvements thereon are not used and useful in connection with the rendition of stockyard services for which rates are charged by respondent, for the reason that they are operated by independent operators in connection with their own business for their own compensation and profit, and they are not operated by the Stock Yards Company as a stockyards consisting of pens and other inclosures and their appurtenances in which livestock is held for shipment (T. 152).

Transit House

Item No. 50 represents the hotel known as the Transit House. It is located on the south side of Illinois Avenue and immediately east of the entrance to Stevens and Williams feedlots. It is located east of the entrance to the stockyards at Illinois Avenue, the railroad tracks intervening. It is on the main street in the city of South St. Joseph [fols. 893 & 894] known as Illinois Avenue (T. 153). It is

about 500 feet from the Transit House to the eastern boundary of the main stockyard area. It is a four-story brick structure which is leased to an independent operator and conducted as a regular commercial hotel. I do not know that I ever stopped there, but I have patronized the dining room. The patronage consists principally of livestock truckers who are in the commercial trucking business bringing livestock to the St. Joseph Stock Yards for the owners. I do not think it is used and useful in connection with the rendition of stockyard services for which rates are charged by respondent for the reason that the property is leased out and independently operated (T. 154). It is not a stockyard and is not used exclusively for employees or patrons of the yards in connection with their compensation or stockyard services rendered to them. Anyone who patronizes this hotel pays the operator or lessee the regular rates for the services rendered by the hotel proprietor (T. 155).

[fol. 895] The witness then identified the annual reports of respondent for the years 1930, 1931, and 1932, which were marked for identification as Government Exhibit Nos. 109, 110, and 111 (T. 161) and later received in evidence.

From the study I have made of the receipts of livestock as reflected from the books of respondent over a period of years, from my association and observation of the operations of the Stock Yards Company during the time I have had occasion to be at the stockyards and make observation and carry on my work, and from my general knowledge of the conditions affecting the stockyards industry, it is my opinion that the trend is definitely downward in the volume of receipts and, inasmuch as the facilities now in use for stockyard services appear to be ample, it is my opinion that there is no need for additional expansion land (T. 162).

[fol. 896] Cross-examination:

Trend of Receipts

On pages 11 to 25, inclusive, of Government Exhibit No. 108 I show certain statistics regarding the receipts of livestock at the St. Joseph Stock Yards. The important factor [fol. 897] is a five-year moving average. It shows the trend of most species of livestock downward. Such a study does not appear in my previous exhibit (T. 167), because it did not occur to me that that would be necessary on my part. During that time and previous to the hearing another rep-

resentative of the Department was compiling statistics (T. 168). I do not think the trend is an absolute governing factor as to whether the receipts will be larger or smaller in 1933 than in 1932. As the report indicates, there have been fluctuations from year to year. Next year might be lower or higher. That, of course, no man can prophesy except by using the past as a guide as to what may occur in the future, connected with general conditions. I do not think the information contained on pages 11 to 25, inclusive, indicates what will happen in the year 1933. It indicates that, judging by the past and other information which I would use in reaching conclusions, receipts are not going to increase materially. There may be a little increase from year to year or from month to month, but I do not see anything in the situation to lead me to believe there will be any appreciable increase (T. 169). My charts and many of my figures end with the year 1931.

Referring to Government Exhibit No. 111, the total receipts of all species in 1932 was 447,713 head less than for 1931, the only increase being in calves where the increase was 1,374 head. The decreases in other species were cattle 72,270, hogs 95,721, and sheep 281,096 (T. 170). The percentages on pages 27, 28, 29, and the top half of 30 of Government Exhibit No. 108 include the drive-ins from the feedlots. If they were excluded from the truck-in receipts the percentages would be changed somewhat. The data on page 30 indicates the number of sheep driven in from the feedlots and, if they are deducted, it would reduce the percentage of drive-ins. It is merely a matter of computation. I think [fol. 898] that the comparison of rail and truck receipts has a bearing on what may be expected in the future. The trend of receipts by rail and truck indicates the trend in the method of transporting livestock to market (T. 171). It indicates a decided upward trend in the truck business and a decided downward trend in the rail receipts. At St. Joseph and practically all other markets there has been a decided increase in the amount of truck receipts in the past few years. Judging from what has occurred in the past and the increasing advantages, such as good roads favoring truck shipments, and the fact that more people are inclined to use the highways in preference to the railroads in shipping livestock to market, it would be my best judgment that the trend will continue (T. 172).

Traders and Speculators

A "plant" is livestock which may have been sold once and the purchaser may desire to sell it again, and he may bring it to a commission company and the commission company will resell it for him. I imagine that "plants" are included in page 38 of Government Exhibit No. 108 in column 4, but I cannot say as to that (T. 172). The same thing would apply to pages 39, 40, 41, 52, 53, 54, and 55. I do not know if the figures on pages 42, 45, 56, 57, and 59, under the column "Truck", include livestock brought in from the feedlots upon which the Stock Yards Company collects its charges under Item 12-A of its tariff. The figures on pages 46 to 51, inclusive, represent the purchase of livestock by traders and order buyers and most traders are speculators (T. 173). I do not know if any resales are included. These are the purchases. I do not know what they did with the stuff. They may have sold it or they may have shipped it out. It is purchased by traders and order buyers. [fol. 899] They may have bought it on orders. There is one item of 666 head which were brought on order and 47 head that seem to have been bought and shipped out (T. 174). As to the balance, I do not know if it was resold or what happened to it. The same thing would be true of pages 60 to 65, inclusive (T. 175).

[fol. 900] Traders and Speculators

The figures on page 91 include so-called resales by traders and speculators (T. 179). There is no relation between the figures shown on that page and the number of sheep sold [fols. 901-937] by traders and speculators and shipped to the country for the month of January. I think I know the practice of respondent relative to the collection of one-half the yardage on resales by traders or speculators. I think the practice is that when livestock is resold that charge is made. Witness first stated that he recollected that the practice was to charge the reyardage rate on resales of livestock resold and reweighed in the commission division (T. 180) but later stated that he thought the Stock Yards Company charges one-half yardage on all resales made by traders or speculators regardless of whether they are made in the commission men's sales area except on sales which go to the country or to stockers or feeders (T. 181). I do not remember that there has been any change in that prac-

tice. I will look it up and give the correct status as I find it to be (T. 182).

[fols. 938-960] Anchor Serum Company

The Anchor Serum Company is purely an outside industry. Any rental or other revenue which respondent receives from the Anchor Serum Company is likewise outside revenue. If this property is not used and useful, all the business that respondent does with that company that pertains to that property would likewise be outside of my idea of stockyards use. That would apply to all other similar outside enterprises that respondent may carry on. I do not want it to be understood that by eliminating any property owned by respondent from the rate base for yardage and feed rates and stockyards services, there would actually be a confiscation because respondent may conduct any business, and if successful in it I feel that respondent would be under no obligation to include that revenue in the stockyards income, because it is an income from an outside industry (T. 302). That would apply to income respondent receives from the use of the loading and unloading facilities. Counsel for the Government admitted that a portion of the Anchor Serum Company tract which is in Zone A was included by the Secretary as used and useful property in his former decision (T. 303).

[fol. 961] Feedlots

Other feedlots excluded for substantially the same reasons as Item No. 24 are covered by Items 6, 48 and 42, although there is some difference in respect to Item 42 from the other feedlots which is brought about by the lease to which I have referred. That is the only item of difference except that some of these facilities are used for different purposes. I have used the phrase several times, and it appears on page 153, line 2 of Government Exhibit No. 108, that the leases to these private feedlots have been allowed to expire (T. 370). I learned that in this way: the last time I called for the existing leases and was given [fol. 962] the lease file and did not find these leases, I was told these leases had expired and had not been renewed. I did not inquire in what manner they had expired. It may be true that they were all terminated as of the effective date of the tariff which first included item No. 12-A. I was

not informed as to just how they expired or when. The compensation for the use of feedlots is now covered by a tariff provision except in the case of the Rockhold lease where there are other considerations. I am referring to the entire lease and the list of properties attached to and made a part of the lease (T. 371). As to the balance of the feedlots each of the users of these feedlots pays the respondent under the provisions of item No. 12-A of the tariff. I learned that these feedlots are controlled by the users, as stated by me in Government Exhibit No. 108, by observation and conversation with the people who are operating them and the description of the manner in which they operate them. I saw some of the operators while they were on the property. I saw them in other places. By "control," I do not mean that respondent has no right on these premises. I presume they have the right of inspection or any rights the owner of property let to an independent operator would retain. By "control," I mean operating control. These operators who have the use of these facilities operate them in connection with their feeding business (T. 372). I think they have more control of these facilities than a commission man has of the pens that are alloted to him because the feedlots are more of an exclusive proposition and are not used for public marketing purposes, but for the private business of the operators. While a commission man is using sales pens allotted to him he has exclusive use of those pens. The stockyards, of course, reserves a right to change these allotments at [fol. 963] will, and there is more or less shifting of the use of commission pens than there could be of these private feedlots. That is because the use is more or less a daily proposition. It is more of a changeable proposition, and these feedlots where livestock is fed for a considerable length of time are more permanent than the pens in the stockyards where livestock is held for sale. I do not know whether or not respondent reserves a right to change the allocation of these feedlots at will, but presume it does. I have never found any agreement, nor have I been advised whether they reserve that right (T. 373). If there is no other agreement than the published tariff I do not know whether respondent would have that right. I do know that they have been used by the same tenants for considerable periods of time and in most cases by the same tenants that

occupied them as feedyards before that rate was inserted in the tariff.

Some of these feedlots are entirely separated from the other pens and enclosures of the Stock Yards Company. Item No. 33 covers the O'Connell feedlot which is entirely separate, and other portions of the O'Connell feedlot south of that tract are entirely separated. The feedlots in what was formerly known as the Southern cattle division are separated from the stockyards in which livestock is held for immediate sale, the Rockhold feedlots are separated, and Stevens and William feedlots are entirely separated and located over across the tracks in the city. The northerly portion of the land where O'Connell feeds livestock under item No. 12-A of respondent's tariff, immediately adjoins the storage pens of Armour and Company. A small portion of that area covered by Item 6 adjoins the stock drive between the Armour cattle storage pens and the O'Connell feedlots (T. 374). The section of the O'Connell feedlots that is included in the Anchor Serum lease is [fol. 964] south of Item 6. One could traverse the land that its now used by the O'Connell feedlots from that stock drive to any portion of the land so used. The feedlots in the old Southern cattle division are separate and apart from the adjacent pens. By physical location between those feedlots and the hay barn there is an alley or driveway. It is about twice the width of an ordinary stockyard alley. It is used, among other purposes, in connection with the hay barns, and that alley immediately adjoins to the south of the feedlots (T. 375). On the east side there is a general alley separating the feedlots from the sheep sheds and the company's stable. It is the width of an ordinary stockyard alley. It has a clearance on the west side of the sheep sheds, and might be used in connection with the sheep dipping facilities. It has been included as used and useful (T. 376). The facilities covered by Item 42 are just across the Belt right-of-way from the drive-in sheep division. Those feedlots in the city limits are in the old horse and mule division. At the time the Southern cattle division was constructed it was used as part of the stockyard facilities. At that time it was in the stockyards. Its use was discontinued, the same as the use of the Southern cattle dock, and for the same causes. At the time the horse and mule division was originally constructed, and for a number

of years thereafter, it was used for stockyards services and was a part of the stockyards (T. 377). I allow the manure dump in Zone N. As to location that is just as separate and apart from the commission sales area as most any portion of the entire property. At the time the horse and mule division was used for stockyards services it was used for the sale division of horses and mules. When the Southern cattle division was used it was used for the sale of Southern or ticky cattle. It is not my understanding that when live-[fol. 965] stock is consigned direct to the feedlot operators through the stockyards and is not offered for sale at the stockyards that the initial yardage charge is made, but because no sale is made a second yardage is not charged. My understanding in respect to livestock consigned direct to one of those feeders and not sold and not consigned to a commission company is that the yardage charge would be waived under the paragraph of the tariff which provides that shipments going through and destined to be forwarded to country points would not be subject to yardage charges (T. 378). I think all this livestock is regarded as forwarded to the country by the Stock Yards Company. I do not recall asking Mr. Topping about that. I discussed that at some length with some official, and I think it was Mr. Black who, I think, informed me on that. My recollection is that such livestock was considered the same as livestock forwarded to the country without sale in the stockyards. It is my recollection that Mr. Black was my source of information. I also recall that I discussed that point with one of the operators but do not remember just which one it was.

On page 154, at the end of the second paragraph, of Government Exhibit No. 108, I make certain statements about buyers inspecting livestock in the feedlots (T. 379). I there state that the packer buyers may inspect the livestock in these feedlots, but formal sales, weighing and delivering are consummated at the stockyards. By "stockyards," I mean the pens and other enclosures and their facilities in which livestock is held for sale. Notwithstanding that statement I still think that these facilities are separate and apart from the facilities operated as a public market. Sheep fed on these feedlots may be inspected, but they are not actually sold. The sheep are there so that one can go down and inspect them. There is not any restriction as to any-[fol. 966] body going in and looking at the livestock. I do

not know, but I think the feeders would naturally do a lot of sorting (T. 380). I am not familiar with just what they do except operate as a feed yards. I am not familiar with whether they are chalked. I know what the term means. It means to mark classifications or grades or groups of animals by which they are classified differently. My understanding is that sheep are not actually sold on these feedlots. They are not held on these premises for sale. I do not understand it to be true that sheep are displayed, may be seen by buyers, and sorted, graded, chalked and sold in exactly the same manner as sheep are sold in the sales division in the commission men's pens. I understand they are not held on these facilities for sale and that the sale is consummated when they are brought back into the stockyards. I do not know if the buyer and seller agree as to the price when the sheep are on these feedlots (T. 381). As to sheep viewed by packer buyers and purchased, I do not know if anything is done after they arrive on what I consider stockyards property other than driving them to the scales, weighing them, temporarily yarding them, and then driving them to the premises of the packer buyers.

I used to work for railroads. It has been a good many years since I was connected with the railroad business, but at that time I was reasonably familiar with the feeding in transit privilege at certain feed yards for which the railroads publish a tariff charge. There was some arrangement whereby animals could be taken off the cars and held for some time for 8½ cents and then reshipped at the balance of the through rate (T. 382). I do not remember just what it was, but there was a privilege granted for an additional compensation for stopping livestock off in transit at some farm or feedlot to fatten and finish them for market. [fol. 967] All the livestock that is placed on respondent's feed lots is finally sold and shipped or slaughtered. A majority of the lambs is sold on the St. Joseph market. I would not say a majority of the cattle is sold, although I know a great deal of it is sold on the market. If not sold I do not know what happens to it because there is no rule governing that. The owner may do as he likes. He does not have to bring it back to the stockyards. I would naturally think in the conduct of the business the owner would finally do something with the livestock.

These feedlots consist of pens or other enclosures and their appurtenances (T. 383). They are operated for compensation and profit by respondent, but not as a public market. They are operated for compensation or profit by the Stock Yards Company. I stated I was informed that they are not used for sales purposes, and that Mr. Black told me that livestock is held on these feedlots for feeding and fattening. I do not think they are held for sale or shipment. I think the party feeding this livestock contemplates both sale and shipment. I do not think it is a home for aged livestock (T. 384). After the livestock is fattened I do not know whether it is sold or shipped in commerce. The owner may sell them and may ship some in commerce, he may ship some that would not be considered in commerce (T. 385). I think it would have to go out of the State to be in commerce. I am referring to commerce as defined in the Packers and Stockyards Act. I read how the Supreme Court of the United States construed the Act in referring to commerce and am not informed as to what the Supreme Court has held. My opinion would bow to the Supreme Court. Livestock does not have to go out of the State to move from the commission sales pens of respondent to either Armour and Company or Swift and Company.

[fol. 968] I do not know how many people have fed livestock in the facilities I have designated as Stevens and Williams feedlots. The only information I have is what Mr. Stevens gave me. I asked Mr. Stevens about that and was told that practically all the livestock or lambs that have been fed over there were the lambs of Stevens and Williams, but that some other livestock had been fed. Mr. Stevens referred to one lot which he had fed for another owner (T. 386). I did not learn that other people had actually fed livestock over there. The livestock that Mr. Stevens referred to was to be fed for the owners under contract. I do not know about people going over there and feeding livestock themselves.

Referring to the statement on page 156 of Government Exhibit No. 108 at the beginning of the paragraph wherein it is stated that Swift and Company and Mr. Rountree may alternate in the use of certain pens by mutual agreement among themselves, I learned that from Mr. Black. Mr. Black first told me that Rountree had retained two pens in the west end of a certain shed marked on the map as

sheep feeding shed. When I was there I found Swift and Company and Rountree were alternating. I found some of Swift's lambs in the pens that had been designated to me as the Rountree pens, whereas some of the Rountree sheep were in some other pens (T. 387). I concluded from that that it was a mutual agreement between them as to just which pen would be most convenient for either one of them to use at certain times. It did not occur to me that the Stock Yards Company had designated the alternative use by these parties as their needs required, because I had been told by Mr. Black that the other specific allotment had been made by the Stock Yards Company. I do not claim that once they allot a feedlot to a person that the Stock Yards Company can never take it back. They might re-[fols. 969 & 970] arrange or re-allocate these facilities. I do not know whether it can or not unless it has some arrangement with the people who establish their feeding facilities in these lots. I do not know of any such arrangement. It would be a managerial problem to allocate and re-allocate various of these feedlots to parties desiring to use them (T. 388).

It is my contention that this lease to which I have referred on page 160 of Government Exhibit No. 108 gives Mr. Rockhold the exclusive use of facilities enumerated on page 161 for the reason that having acquired by lease the use of the equipment and certain other permanent fixtures and improvements, that it would be impractical if not impossibe for anybody else to use them at the same time Rockhold is using that equipment and the other facilities included in the lease. I do not know whether or not anyone actually has used these same facilities during the year 1932 at the same time Rockhold was using them. This lease has expired unless it has been renewed. I do not know if this property and these facilities are now leased to Mr. Rockhold. It is my understanding that Rockhold or the Rockhold Feeding Company pays the charges specified in item 12-A of respondent's tariff for all livestock fed by that company (T. 389). Item 23 is not used in connection with the feedlot facilities. It is not used for any purpose. I base that statement on my inspection and not on what Mr. Black told me (T. 390).

[fols. 971-973] Item No. 42, point E, approach between the Belt Railway and sheep barns, 28,901 square feet, includes an area used for a roadway. It is the area between the Rockhold sheep feeding barns and the Belt Railway tracks. It is not occupied by the other items indicated under Item 42. All the feedlot business passes over this area and roadway. Anyone could use it because it is not fenced, but they would have no occasion to use it unless there is an outlet to the west. I have never observed any truck parking except trucks and automobiles of the feeding companies. I think there is no parking of trucks that go into the sheep truck-in division. There is a large parking area immediately south of the railroad tracks and adjacent to and adjoining the sheep truck unloading docks (T. 395).

[fol. 974] Transit House

The use of the Transit House is substantially the same as it was in 1929 (T. 401). It is my understanding that the patronage of the Transit House consists principally of livestock truckers who are in the commercial trucking business. I do not base that statement on any investigation of the registrations. I do not know the number of registrations in the months of November and December, 1932 which were actually shippers. The Secretary in his prior decision allowed the Transit House as used and useful (T. 402).

Baby-Beef and Pig Club Show

I am familiar in a general way with the 4-H Club Show held every fall at the St. Joseph Stock Yards. It uses for a limited period a part of the facilities which I have designated in Government Exhibit No. 107-A as the Stevens and Williams Feedlots (T. 402). It also uses the entrance which is lot No. 6. That condition existed at the time of the prior hearing. Lot No. 6 is also a means of access to the rear of the Transit House. It can be so used. It is the intervening space between the Transit House and the so-called harness shop. There is an alley in the rear of the Transit House, but I do not know whether it is open to the east or not. If it is closed, then the only access would be via this roadway across lot 6 (T. 403). Lot No. 6 is paved so that trucks and vehicles of any sort which want to drive to the rear of the Transit House with provisions can readily

do so. I have made no specific investigation to determine the exact area in the old horse and mule division which is occupied by the 4-H Club Show. I think the Transit House is used by the 4-H Club boys and girls at the time of the show. It has been the custom of the 4-H Club members to [fols. 975 & 976] stop at the Transit House (T. 404). I do not recall any other facilities at the St. Joseph Stock Yards other than these facilities of the old horse and mule division which are available and suitable for a show of the type of this 4-H Club show. I do not know about the big dinner at the Transit House for these boys and girls, and have no idea how many of them come and actually enter animals (T. 405).

Redirect examination:

Resale yardage is covered by item 1 of respondent's tariff which is on page 2 of Government Exhibit No. 108, and reads as follows: "Livestock resold in commission division one-half of the above rates additional will be collected." It is my understanding that that is the only re-yardage charge made and collected (T. 405).

[fols. 977-979] Recross-examination:

On cross examination I stated that Mr. Topping's statements of the practice in respect to re-yardage confirmed the recollection I had of it, but stated I was uncertain and desired to look it up. I have not looked it up as a matter of practice (T. 413).

[fols. 980 & 981] Mr. Herman C. Henrici, a witness previously called by the Government and sworn, being recalled, testified in substance as follows:

Direct examination:

[fol. 982] Cost of Reproduction Less Depreciation

Qualifications of Witness

Since the prior hearing I have been chief valuation engineer, Packers and Stockyards Division, Bureau of Animal Industry, U. S. Department of Agriculture, and that is still my employment. I have inventoried and appraised the

stockyards at Kansas City, National Stockyards, East St. Louis, Omaha, Sioux City and Wichita. I have inventoried and appraised the commission men's office furniture, fixtures, and equipment at the St. Joseph Stock Yards, Kansas City Stockyards, St. Louis Stockyards, and the Chicago Stockyards. All of this work has been done under my supervision and direction. Since the prior hearing in this proceeding my firm has appraised various office buildings in Kansas City, of which the New York Life Building is an example (T. 422). I participated in an advisory capacity in the appraisal of the New York Life Building.

Since the prior hearing, as an engineer or consulting engineer, my firm had charge of the remodeling of the New York Life Building, entailing an expenditure of $250,000. It designed a water distribution system for the counties north of Kansas City entailing a distribution system of 36 miles (T. 423). It has constructed and awarded contracts as engineers for a 700,000 gallon concrete reservoir in Marshall, Missouri. My firm does not do any construction work (T. 424).

Inventory

Since the close of the former hearing, December 17, 1929, I have taken steps to bring up to a later date the inventory of the structural and other property of respondent other than land. I came to St. Joseph about the latter part of August, 1932, and began the work and have been working at it off and on since then up to date (T. 430). It is now [fol. 983] complete and was completed prior to the convening of this hearing. The work was done by five engineers who are employed in my office with two assistants, all working under my supervision and direction. The engineers are A. T. Cushing, W. O. Galbreath, J. E. Johnson, A. F. Schramm, and H. E. McClintock. The assistants are Kenneth Snider and Robert Bush. The work consisted of bringing up to date the inventory included in this record as Government Exhibit No. 4, with various letter designations for the several volumes (T. 431). The maps and notes covering the different sections of the yards were divided among these men and they compared the maps and notes with the various buildings. Whenever it was found that a substantial change had been made, such as pens remodeled, the parts of the property involved were removed from

the inventory, and in cooperation with the Government auditors, the books of the Stock Yards Company were consulted for additions and betterments which had been made from the date of the original inventory to August 1, 1932 (T. 432). Mr. Kosters, of Stone and Webster Corporation of Boston, was in my office on August 25 and we agreed that the inventory or appraisal should be based on August 1, 1932. That corporation represents respondent in this proceeding in the inventory and appraisal of its property. Since August 1, 1932, there has been one substantial addition which Stone and Webster included in their inventory and appraisal and which was not set up on the books as of August 1, 1932, as an addition and betterment (T. 433). That is the viaduct which was set up in Stone and Webster's appraisal as the Illinois and Packers Avenue viaduct, which they valued at $18,610. I did not set up that viaduct for the reason that it was not on the books as of August 1 and, therefore, I felt it should not be put into the appraisal [fol. 984] on account of the danger in bringing this appraisal up to date at some future time that the item might be included a second time, if the same methods were used of using the book figures for additions and betterments. It is the practice of engineers in making an appraisal to have a cut-off date in order to avoid the confusion that might be incident to using separate dates. I know of no other substantial additions or betterments or replacements in respondent's structural property since August 1, 1932 (T. 434).

Government Exhibit No. 113 is index of plans and drawings of additions and betterments which have been made since the prior inventory and are supplemental to Government Exhibit No. 4-C (T. 435). Government Exhibit Nos. 113-A, 113-B, and 113-C are the envelopes which contain the additional or supplemental plans or drawings. They are blueprints of tracings which were obtained from the Stock Yards Company, and are merely copies of plans and drawings owned by and in the records of respondent. They were made under my supervision and direction and are true and correct copies (T. 436). After bringing the inventory up to August 1, 1932, I proceeded to make a reappraisal of respondent's property other than land as of August 1, 1932 (T. 437).

Unit Prices

I reappraised the entire property with the exception of additions and betterments which I took at book value. The same seven men mentioned before assisted me. Before coming to St. Joseph letters were written to material men and supply dealers in St. Joseph and Kansas City, who would furnish materials that might be used in the construction of the stockyards. We consulted with contractors and labor unions to obtain the schedule of rates which would be paid labor in the construction of these yards. We worked [fol. 985] up a labor formula which we thought applicable to St. Joseph and applied those prices which we obtained for material and labor to the inventory (T. 438). The general methods of appraising the property were the same I used in making the original appraisal which is Government Exhibit- Nos. 4-E to 4-I, inclusive, and as described in the abstract of record of my testimony in the former hearing. I got all my material prices from material men in St. Joseph or Kansas City. I used Kansas City prices because it is a larger market and could supply quantities of material with equal ability to similar firms in St. Joseph. I am speaking now of the cost of reproduction new. Kansas City is 65 miles from St. Joseph. There are some larger material dealers in Kansas City than in St. Joseph (T. 439). These material prices were prices laid down on the job in all instances, and the prices I used in my appraisal for materials were always the prices laid down on the job. The labor cost was obtained by reference to the labor union headquarters and in consultation with some contractors. The labor union headquarters were in St. Joseph and represented local St. Joseph unions in the various trades which would be required in the reproduction of the structural property of respondent. They furnished a union scale of wages in force on August 1, 1932, for the various types of work (T. 440). I do not know if there has been any reduction or increase in union wages since August 1, 1932, and have made no investigation to ascertain. I had no agreement with anyone acting for respondent as to the use of union wage scales. I used them because I felt that a project of this size, in order to be completed in the construction period estimated, would require union labor. The present is a period of great unemployment. There are

many men, both union and non-union, who are out of work [fol. 986] (T. 441). If respondent were reproducing its property, it could obtain in certain crafts non-union labor, but in certain other crafts they would have to use, on account of a limited supply, union labor, in which event it would be required that the entire job be union labor. I do not know this of my own knowledge, but that is my reason for using union labor as a basis. The labor cost is about 38 per cent of the cost of reproduction new. If I had used non-union wages instead of union wages, it would have decreased my labor cost. A wild guess would be that it would have decreased my labor cost 10 per cent. In order to answer accurately, it would be necessary to first assume what the non-union scale in the (T. 442) various crafts would be, and then substitute that scale in the labor formula and apply it to the inventory. I have not done this but I would say roughly 10 per cent. It would take me and my men probably a month to do this. It would mean recomputing the entire appraisal. I think it is my best judgment that it would be approximately a 10 per cent reduction of the 38 per cent, or 3.8 per cent of the bare material and bare labor (T. 443). The 3.8 per cent would be substantially of the entire reproduction cost new.

The vouchers referred to in Government Exhibit No. 114 show material prices of materials purchased by the respondent company for one year previous to August 1, 1932. These were used along with other material prices in making my appraisal (T. 444). The information which I obtained from local contractors as to labor costs was information which could not be obtained through the union. There were some crafts of which there is no union in the city, and in connection with those crafts I had to use the price for labor that was current in the city among contractors. I found that while the contractors make an effort to pay the union scale, in some instances they are paying [fol. 987] on a piece basis but are letting their records show the scale. In other words, one contractor said that in laying brick the men that he employed understood that he was to require them to lay so many brick an hour and that is all he paid them for. The payroll, however, showed the scale (T. 445). In other words, while the scale did not require a certain number of brick per hour, the contractor did. However, there is no way of knowing how much work

is done that way, piece work. The union wage scale does not specify how much work the worker shall do. I found at least one of the contractors was setting a definite amount of work to be represented by the union scale and was, therefore, really paying a certain wage for laying so many brick, regardless of the amount of time it required. I tried to consider the efficiency of labor in making my appraisal. I have not used the labor formula which was the highest productive basis, nor the lowest productive basis, but feel that the formula which I used was effective as of August 1, 1932. In order to apply the union scale of wages to the cost of construction, it is necessary to base it on a performance per hour or per day (T. 446). I did not use the exact performance which this contractor about which I was speaking required. I used a less performance which means a higher cost. I figured one mason will lay 1,000 bricks in eight hours, and it would require one and one-quarter hour hod carrier per hour mason time, and one foreman for 10 masons. That is the labor formula I used. A hoisting engineer would also be required. The contractor to whom I referred gave more brick than that per 8-hour day. I think it was 1,200, but could not state positively (T. 448). He was foreman for the Thompson Construction Company in Kansas City.

[fol. 988] GOVERNMENT EXHIBIT No. 114

The following is the general summary of the appraisal of the structures and equipment of the St. Joseph Stock Yards Company as of August 1, 1932.

	Repro. New Value	Cond. %	Repro. New Value Less Deprec.
Exchange Building Area	373,296	73.3	273,508
Cattle Division	621,274	77.2	479,638
Sheep Division	125,731	77.4	97,298
Hog Division	431,053	78.9	340,201
South of Hog Division	59,982	79.9	47,905
Southern Cattle Division	41,696	45.1	18,798
Company Stable Area	13,727	69.1	9,489
Horse and Mule Division	142,295	73.6	104,684
General Items	32,567	76.3	24,847
Rolling Equipment and Horses	Retired (Use Book Value)		
Miscellaneous Items	367,837	75.8	278,942
Total Before General Overheads (Revised Appraisal 1927 with Retirements)	2,209,458	75.82	1,675,310
Omissions and Contingencies 5%	110,473		83,766

	Repro. New Value	Cond. %	Repro. New Value Less Deprec.
"A" Sub-Total	2,319,931	75.82	1,759,076
Architects and Engineers 5%	115,997		87,954
Legal Expenses 1%	23,199		17,591
General Salaries and Expenses 2%	46,399		35,182
Liability Insurance (On Labor) 6.1%	51,015		38,680
Fire Insurance ½%	11,600		8,795
Taxes During Construction (1932)	24,126		18,292
"B" Sub-Total	2,592,267	75.82	1,965,570
Interest at 7% per annum for 6 months (½ construction period)	90,729		68,795
"C" Total Cost Exclusive of Land Value	2,682,996	75.82	2,034,365
Additions and Betterments Book Value—1927 to 1932 Auditors Report	128,041	100.00	128,041
"D" Total Value August 1, 1932 Exclusive of Lands	2,811,037	76.93	2,162,406

I have compared the union scale of wages used in my appraisal as of August 1, 1932, with the scale used in the appraisal as of June 30, 1929. The present scale is lower, *in some instances* 33⅓ per cent, some 25 per cent, and some 10 per cent. It varies. For instance, in 1929 carpenters were figured at $1.00 and in 1932 at 75c, which [fol. 989] is 33⅓ per cent less. Painters, the same difference in price; electricians, 10 per cent, being reduced from $1.10 to $1.00; plumbers, from $1.25 to $1.00; sheet metal workers, $1.12½ to 87½c; brick layers, $1.50 to $1.25; hod carriers, 75c to 60c; plasterers, $1.75 to $1.12½; stone masons, $1.50 to $1.25; steam fitters, $1.25 to $1.00; steam fitters' helpers 62½c to 40c (T. 449); lathers, $1.37½ to $1.25; tile fitters, $1.37½c to $1.25; composition roofers, 75c to 40c; slate roofers, $1.35 to $1.10; common labor, 50c to 40c; teams, $1.00 to 75c.

Government Exhibit No. 4-I contains the labor formula which compares with the proposed exhibit. Some of the property I appraised was not, strictly speaking, structural property, such as horses, wagons, office furniture, and things of that nature. I obtained the value of these from the book value on respondent's books in the case of automobiles and horses because they are changing from month to month, and I thought the actual price paid for horses and automobiles would be properly reflected by the books. Furniture and fixtures were appraised by applying current prices to the inventory (T. 450). These prices were obtained from supply dealers. The furniture and fixtures which I appraised were not new and were more or less used,

some of it for several years. The values I placed on these articles were not the price at which they could be taken out of the offices and sold at second hand. I appraised the furniture and fixtures new, or if an item of furniture was not commonly made today, I appraised it at its new value at the nearest thing to it that is made today in order to get its reproduction new value (T. 451). If a calculating machine is no longer made and marketed, I took the price of the nearest approach to that machine which is now made and marketed. I ascertained the cost of reproduction new of furniture, fixtures, wagons, manure dump cars, and all that class of property.

[fol. 990] Overheads

To the bare cost of material and labor I added certain percentages which are known as construction overheads. These are the overheads which would commonly be incurred by a contractor in building a property. To the total of material and labor plus construction overheads I added an item of .5 per cent for contingencies and omissions and obtained a total. To this total was added for architects' and engineers' fee 5 per cent, legal expenses 1 per cent, general salaries and expenses during construction 2 per cent, liability insurance 6.1 per cent of the labor only, fire insurance ½ per cent (T. 452); the actual taxes paid during 1932 for the year 1932, interest during construction at the rate of 7 per cent for 6 months, being half of the construction period. This gave a total to which were added additions and betterments from 1927 to 1932. That gave a final total, exclusive of land. I make a distinction between construction overheads and general overheads, construction overheads being those commonly incurred by contractors and which I have shown throughout my appraisal where they would have occurred, and they are not included in the general overheads. They are included in the base on which certain of the general overheads are calculated as percentages. The total, exclusive of land, is $2,811,037, which is the cost of reproduction new (T. 453). Omissions and contingencies, 5 per cent, amounting to $110,473, is included in the base on which the other percentages or general overheads are calculated. One of the things that omissions and contingencies are to cover is things omitted from the inventory in spite of care. Other things are, for

example, the drawings that were given by the Stock Yards Company for calculating the elevated water tank. Upon [fol. 991] comparing appraisals it was found that when the excavation was completed to the depth shown by the drawings, the soil was not suitable for carrying the load which would be imposed by the tank full of water, so it was necessary to go deeper and expand the footings to a much larger degree. There is no way of telling this from looking at it from the top of the ground, other than from the drawings. In that instance I made my appraisal based on the original drawings, whereas those drawings were changed. Now, those elements in various forms appear now and then in any appraisal. The drawings furnished did not show these expanded footings (T. 454) and that is an item included in these omissions and contingencies. Contingencies are akin to omissions, in that they cover the general error that creeps into estimates which have not been taken care of altogether in the estimates. For instance, the construction program and the labor formula contemplate some delays incident to bad weather, but nothing of a prolonged character such as a hazardous fire or a continued storm for an excessively long time, or unusually bad soil conditions at some place which require a different type of construction. Those are the things that are ordinarily contained in contingencies. It is a margin of error. In the past I have found that such omissions and contingencies as have later been determined, plus some which have not yet been determined, add about 5 per cent. This 5 per cent comes from my own experience in rechecking inventories (T. 455). It has some relation to the experience of other engineers as this percentage is very generally used. Customarily appraisal engineers make one inventory and then base an appraisal on that and allow five per cent for the margin of error. The repeated checking of an inventory would reduce the margin of error. I made an inventory in 1927 which was brought up to date in 1929 and again in [fol. 992] 1932. It is true that the inventory of 1932 would be more accurate than in the case where there had been no rechecking, but the example I gave of the foundations for the water tank is an example of things that frequent checking of the inventory do not develop (T. 456). There has been no comparison of the inventory until Mr. Kosters and I made it in 1932. Prior to that time, inventories were not compared. If 5 per cent is regarded as a fair allowance

for omissions and contingencies where just one inventory has been made without being rechecked several times, it is rather liberal to allow the same percentage where all this checking and double checking has taken place. That is just one illustration of the liberality of my procedure.

The general overheads stated in Government Exhibit No. 114 are the same type of overheads used in my appraisals of 1927 and 1929 (T. 457). The liability insurance has been changed, the fire insurance has been added in the 1932 inventory and appraisal, and taxes during construction have been increased. Those are the only changes. The liability insurance has been increased because I used the wrong rate in 1929. The rate I used in 1932 has been checked with insurance companies and it was found that 6.1 per cent of the labor was the correct amount. I used 2 per cent in 1929. I did not have any overhead for fire insurance during construction in 1929. This is ½ per cent of the cost of material and labor. The reason taxes during construction were increased was because I took the taxes actually in effect (T. 458) at the stockyards and taxes have been increased until in 1932 they were $24,126 a year. These are taxes on structures and land, being the total tax bill (T. 459).

[fol. 993] Depreciation

After the cost of reproduction new was found, the next [redacted]as to ascertain the condition percentage of the vari-[redacted]ructures in order to arrive at the cost of reproduction less depreciation (T. 459). My testimony on pages 107 and 108 of the printed abstract of the record represents the method of arriving at condition percentages, and on those pages I stated the principles used in the previous appraisal and the same principles were used in the 1932 appraisal except that I had each of the five engineers furnished with a list of all the property (T. 460). Each of these engineers put down on paper his conception of the proper percentage condition of that property and this is shown in Government Exhibit No. 114 under columns headed 1, 2, 3, 4, and 5. The numbers refer to my engineers Cushing, Galbreath, Johnson, Schramm and McClintock. The column headed "Average" is a mathematical average of the five estimates. These estimates were made independent of each other. One man did not know what the other percentages were until

he compiled his report. I recall something about Mr. Schramm and Mr. Galbreath being sent out to make a reexamination and report on questions arising during the previous hearing in respect to condition percentages. I do not have a very accurate recollection of this (T. 461). My composite condition percentage is 76.93, as shown on page one. In Government Exhibit No. 114 the percentages for each building are applied to the value of the building. For instance, on the page entitled "Detailed Summary" which follows about three pages after the general summary, the condition percentage of the Exchange Building is 72.6, which is the same as that shown in the composite condition percentage. That is the average of five men's estimates. [fols. 994-1001] That principle carries all the way through. Those different percentages applied before the general overheads result in 75.82, which are in principle applied to the overheads. The additions and betterments, however, are not depreciated (T. 462) because I took them at book figures and considered that they were only five or six years old and therefore not sufficiently depreciated to warrant a figure for depreciation. They would suffer some depreciation in that period, and probably the inspection method might have shown some percentage of depreciation. That was giving respondent the benefit of the doubt. The average condition percentage of respondent's property other than land in the 1929 appraisal was 78.7 (T. 463), in 1927, 76.3, and in 1932, 76.93. The figure given for the year 1929 is the one that appeared in my previous appraisal exhibit, and if the exhibit was revised, then the figures would be revised. I do not know if the exhibit was revised. The fact that the property had a higher condition percentage in 1929 and 1932 than it did in 1927 indicates that the property is well maintained (T. 464). It shows that the property has not deteriorated. That would be due mostly to repairs. In my opinion as an engineer, the repairs and replacements such as have been made have kept the property in practically as good condition today as it was five years ago (T. 465).

[fol. 1002] Depreciation Reserve

Depreciation and Composite Life Tables

The probable life of the structures of respondent is shown in Government Exhibit No. 114, the section of the

exhibit consisting of 4 pages entitled "Depreciation and Composite Life" (T. 489). I have found separate life expectancies for various units of property and from those calculated a composite life for the property as a whole of 24.8 years. As a background for this portion of the exhibit I had the record of some twenty commissions and engineers in which the life of various buildings and structures was recorded. I had the observation of each particular building or structure in mind with a view to all the elements which would cause it to be depreciated to zero. Having in mind all the causes of depreciation, such as rot, rust, decay, wear and tear, obsolescence and inadequacy, I placed the life expectancy opposite each item of property (T. 490). In the first column lettered A the reproduction new value of the property is given. In the second column, B, is the life expectancy in terms of years. In the third column, C, is the rate of depreciation per year. It is 100 divided by the life ex- [fol. 1003] pectancy in years. Column B is the result by applying the percentage in Column C against the value in Column A which gives the amount of depreciation reserve estimated on a so-called straight-line basis. I had available various reports made by public utility commissions and engineers which gave the life period of buildings which had been erected and had come to the end of their lives. Those were all types of buildings, including office buildings, hotels, factories, residences, and apartment houses (T. 491). These did not include stockyard structures such as pens and fences. The most of the buildings included in these reports were either in downtown business districts, industrial areas, residential districts of cities, or in small towns and isolated communities. From my knowledge gained from the reports and my own experience and observation, wear and tear, rust, rot, and decay are not large factors in bringing buildings of this country to the end of their lives. Obsolescence is the large factor. It is the result of American progress and the growth of American cities. Inadequacy plays a considerable part in the end of the lives of these buildings (T. 492). When there is an office building on a downtown lot and the growth of the city and the business of the city lead the owners of that building to believe they could rent much

more space if they had more space to rent, it is usually neither practical nor possible to erect an annex to the building. The only thing is to tear down the old building and erect a larger one, or erect a larger one some place else. This same thing is true of obsolescence. The American taste and the advance in the arts combined are tending more to the luxuries of life in recent years. The demand is for buildings, whether they be hotels, apartment houses, office buildings, or residences, with what we call the modern improvements. All this tends to bring these build-[fol. 1004] ings to the end of their lives (T. 493). From a purely structural standpoint most of these buildings were in usable condition when torn down. The reports I have studied include factory buildings or other industrial buildings. Some of the major factors which bring such buildings to the end of their useful lives are as follows. Originally buildings were built of frame structure. Cost of insurance and the safety of occupancy required that fireproof buildings be erected in place thereof, or a building was built to carry a certain load per square foot of floor area and the demands of the occupants were such that those loads be increased. In such case it is sometimes more economical to tear down the building and put up a building of a stronger frame, a different type of building. That may came from a change in the use to which the building is being put (T. 494). Factories or other industrial buildings ofttimes come to the end of their lives through the insolvency of the owner and his ceasing to use them. At other times they come to the end of their lives because it is no longer economical to continue in that business at that place. I have observed what has happened in the jobbing district of the city of St. Joseph. I have observed that a number of buildings once used and occupied are now closed (T. 495). I do not know whether or not any of the buildings at the St. Joseph Stock Yards have become inadequate. If the Exchange Building became inadequate it would be practicable to erect an annex to take care of that inadequacy (T. 497). Insolvency is one of the elements that enters into the life of the property. For example, a Kansas City firm became insolvent after a good many years of successful operation of a factory building.

Parts of the building had to be remodeled for other tenants and other parts just simply had to be destroyed in order to save taxes (T. 498). Life tables simply take into con- [fol. 1005] sideration the time elapsing from the time the building was built until the building ceased to exist. In all cases the reason for its ceasing to exist is not known. It was torn down for some reason but that represents the life of that building. A percentage could not be applied to the life tables as being equivalent to the amount due to insolvency. The fact is that these life tables which have been used as a basis were obtained from buildings all over the United States and I could not say just how much was due to insolvency but I imagine not a great percentage (T. 499). I have not taken into consideration the question of the insolvency of stockyards companies because I knew of no stockyards that had become insolvent. I know of none that have been abandoned (T. 502). The competitive factors in respect to procuring tenants in the Exchange Building are not the same as exist in downtown areas (T. 503). There is no other such space for rent within the area of the St. Joseph Stock Yards other than provided by the stockyards itself. There are some buildings for rent which might be used as offices outside of the stockyards area. They are two or three blocks away in the business district of South St. Joseph, east of the stockyards. Intervening are store buildings and residences. It would not be practicable for persons conducting their business upon the stockyards to maintain offices in the buildings to which I have referred (T. 504). In reports to which I had access and to which I have referred there are included properties of railroads in the nature of pens and fences. They would be partly pens and fences for holding livestock. I do not know what type of livestock pens were included in connection with the railroads. They are of a general type of construction. These tables did not include any pens or fences in what are known as public markets. They did not include any property of [fol. 1006] any kind in a public stockyards (T. 505).

Government Exhibit No. 114

The following is the depreciation and composite life table taken from Government Exhibit No. 114:

A—New Value. B—Life in Years. C—Annual Rate of Depreciation in per cent. D—Amount of Depreciation annually.

Pages	Structure	A	B	C	D
1	Exchange Building	330724	40	2.5	8268
53	Exchange Building Annex	15041	40	2.5	376
60	Hose House and Equipment	2409	30	3.3	79
63	Garage, Brick and Concrete	4885	35	2.9	142
66	Garage, Brick and frame	3323	30	3.3	110
68	Garage, frame	2215	20	5.0	111
70	Receiving Office	12776	40	2.5	319
83	Underground Water	1285	50	2.0	26
84	Outside Electrical	638	15	6.7	43
108	Cattle Commission Men's Pens and Alleys	232038	15	6.7	15547
163	Cattle Traders Pens & Alleys	89206	15	6.7	5977
191	Cattle Packers Pens & Alleys	90764	15	6.7	6081
216	Cattle Drive-In Section	7864	15	6.7	527
219	Cattle Scale #3	10369	30	3.3	342
225	Cattle Scale #4	10454	30	3.3	345
226	Cattle Scale #5	10454	30	3.3	345
226	Telephone Booths	40	15	6.7	3
227	Cattle Scale #6	9740	30	3.3	322
231	Cattle Drive-In Scale	3271	30	3.3	108
234	R. R. Unloading Docks	49445	40	2.5	1236
239	Branding and Dehorning Chutes	2087	15	6.7	140
243	Tuberculosis Testing Barn	8247	20	5.0	412
245	Cattle Dip	2097	30	3.3	69
247	Hay Barns Nos. 1 to 8	82825	40	2.5	2071
251	Hay Scale and Office	2397	40	2.5	60
255	Packers Cattle Drive	3341	15	6.7	224
256	Yard Lighting	576	15	6.7	39
257	Armour Holding Pens	4540	15	6.7	304
258	Sewer and Water Outside Area	1519	50	2.0	30
259	Sheep—Commission Section	65760	20	5.0	3288
267	Sheep—Packers Section	29442	20	5.0	1472
269	Sheep—R. R. Unloading Docks	12576	40	2.5	314
272	Sheep Dip	7109	30	3.3	235
278	Sheep Scale No. 1	9768	40	2.5	244
285	Outlet Sewers (Sheep Division)	1076	50	2.0	22
305	Hog Commission Section	246102	20	5.0	12305
348	Hog Packers & Order Buyers Section	83255	20	5.0	4163
362	Hog Drive-In Section	31450	20	5.0	1573
[fol. 1007]					
375	Hog Scale No. 10	8398	40	2.5	210
384	Hog Scale No. 11	6266	40	2.5	157
386	Truck Hog Scale	1917	40	2.5	48
390	Cripple Scale	247	25	4.0	10
391	Hog R. R. Unloading Docks	45742	40	2.5	1144
402	Packers Drive	1341	15	6.7	90
403	Water—Outside Area	273	50	2.0	5
404A	Packers Covered Drive	6062	20	5.0	303
406	Immunization Plant	15731	30	3.3	519
425	Corn Elevator	14457	50	2.0	289
438	Timber Water Tanks	11368	20	5.0	568

Government Exhibit No. 114—Continued

Pages	Structure	A	B	C	D
443	R. R. Unloading Docks	18426	40	2.5	461
457	Southern Cattle Division Pens and Alleys	13064	15	6.7	875
466	Cattle Scale # 2	5460	30	3.3	180
470	R. R. Unloading Dock	21880	40	2.5	547
474	Packers Drive	1292	15	6.7	87
475	Company Stable	12989	40	2.5	325
482	Shed E. of Company Stable	210	20	5.0	11
483	Miscellaneous Fence, etc	528	15	6.7	35
487	Horse & Mule Fences and Gates	1225	15	6.7	82
490	Horse Barn No. 1	17363	40	2.5	434
494	Shed between Horse Barn No. 1 and No. 2	830	20	5.0	42
496	Shed near Horse Barn No. 1	359	20	5.0	18
497	Horse Barns Nos. 2 & 3	26116	40	2.5	653
502	Shed between Horse Barn No. 3 & 4	822	20	5.0	41
504	Horse Barns Nos. 4 & 5	32959	40	2.5	824
509	Shed No. 6	2060	20	5.0	103
512	Horse Barn No. 20	15743	40	2.5	394
520	Horse Barn No. 21	31005	40	2.5	775
528	Horse Barn No. 22	3712	40	2.5	93
529	Shed No. 23	3967	20	5.0	198
533	Blacksmith Shop	1025	20	5.0	51
535	Sewer and Water—Horse Div	5109	50	2.0	102
536	Reinforced Concrete Reservoir	16175	40	2.5	404
539	Plumbing & Paint Shop	1388	30	3.3	46
542	General Yard Lighting	2607	15	6.7	175
544	Foot Subway	11790	50	2.0	236
546A	Cement Storage House	607	20	5.0	30
549	Outside Paving and Sewers	145436	35	2.9	4218
551	Brick and Concrete Garage	3550	40	2.5	89
554	Transit House	132726	40	2.5	3318
597	Yard Lighting E. of R. R.	260	15	6.7	17
600	Valve Connection to Swift & Co.	1342	25	4.0	54
601	Miller Sheds (Rockhold)	15190	20	5.0	760
610	Thomas McKee Shed	840	20	5.0	42
614	Dutton Sheds (Swift)	5535	20	5.0	277
627	Roundtree Shed (Swift)	17011	20	5.0	851
636	Corrigan's Office	1080	40	2.5	27
638	Harness Shop	11932	40	2.5	298
651	Journal Building	17993	40	2.5	450
666	Leased Lots Southern Cattle Division	13024	15	6.7	873
[fols. 1008–1010]					
671	Fire Protection Equipment	369	20	5.0	18
672	Swift Viaduct	1549	20	5.0	77
	"A" Totals	2209458(av.)	24.8(av.)	4.037	89206
	Errors and Omissions 5%	110473			4460
	"B" Totals	2319931	24.8	4.037	93666
	Engineering and Architects 5%	115997			4683
	Legal Expenses 1%	23199			937
	General Salaries & Expenses 2%	46399			1873
	Liability Insurance 6.1% of Labor Only	51015			2059
	Fire Insurance 0.5%	11600			468
	Taxes During Construction	24126			974
	"C" Totals	2592267	24.8	4.037	104660

Government Exhibit No. 114—oCntinued

Pages Structure	A	B	C	D
Interest During Construction 7% for 6 months	90729			3663
"D" Totals	2682996	24.8	4.037	108323
Additions and Betterments (Book Value)	128041			5169
"E" Totals	2811037	24.8	4.037	113492

[fol. 1011] Unit Prices

My appraisal is not a valuation based on a trend in prices, or average prices, prevailing over a period of years. My appraisal was made by investigation of prices current at the time the appraisal was made. It represents my opinion of the fair and true cost of reproducing this property as of August 1, 1932.

My labor formulae were not built upon the highest degree of efficiency nor the lowest degree of efficiency. They were built upon a basis that I considered would be effective if the property were reproduced on August 1, 1932. It was the degree of efficiency which I considered to be fair in view of all the circumstances surrounding the reproduction at the time of my appraisal. From 1908 to 1911 I was in the contracting business. My firm, generally speaking, is an engineering firm which does not hire labor. My labor formulae come from various sources, by taking contracts [fol. 1012] which my firm has let, by asking for unit price bids and using the scale of wages at (T. 517) the time those contracts were let, from observing in various stockyards certain operations and various references that have been made from time to time, to published records of contracts that have been let, and to my personal judgment. Most of my sources do not involve actual stockyard construction. Of course, in the stockyards which I have appraised, I have made it a point to make observations of certain construction that was being made while I was in the stockyard. An important factor in determining these labor formulae is, of course, my own personal judgment. As to the weight given company vouchers, I observed when I established prices in each instance what the company had paid as part of the evidence but was governed more particularly by purchases which were made in carloads. Not very much of the material that was used by the stockyard and bought within

recent years would be applicable (T. 518). Actually, very few of the prices found on these company vouchers would find their way into my appraisal. I did not analyze the work orders of the Stock Yards Company. My experience with work orders is that they cannot be used without additional knowledge of what work was being done and observing it. I do not know the system of work orders used by the St. Joseph Stock Yards.

Overheads

My construction overheads are shown on page 3 of Government Exhibit No. 115. I am not familiar with organization expense as defined by Mr. Burnell in the prior hearing, but I have included an expense which is commonly called organization expense, which includes general office salaries and expenses incident to the general organization. It [fol. 1013] does not include preconstruction expense prior to the incorporation of the stockyard (T. 519). In other words, it does not involve any preliminary investigation, such as is sometimes set up in public utility valuations.

My overheads do not include cost of financing.

My overheads do not include any going concern value separately set out. In placing my values on the stockyards, I have included all the elements of material and labor and construction overheads and general overheads, and have not attempted to say whether there is included in the total value the element of going concern. There is not any specific item in my appraisal which covers going concern value.

I have not included interest on land during construction because I did not have the land values. It is a proper element of an appraisal over the construction period (T. 520). The same percentage which I allowed on physical structures, 7 per cent, should be allowed.

I cannot state how much of my item of omissions and contingencies applies to omissions and how much to contingencies. Even with a perfect inventory this item would be applied to an appraisal. There have been instances in my appraisal of stockyards where there has been practically an agreed inventory. In such instances I allowed 5 per cent for omissions and contingencies. I did that because it was the fair and proper procedure.

Depreciation

I gave no weight to the age and life of the property of the respondent, except as observed in determining existing depreciation. I paid no attention to it (T. 521). I probably could have found out the age of the property but made no inquiry. I do not think these five men actually knew the [fol. 1014] age of the property. The names of the engineers who are enumerated in Government Exhibit No. 114, in the rear portion of the exhibit under the heading "Condition Per Cent" and in the five columns headed 1, 2, 3, 4, and 5, respectively are: 1, J. E. Johnson; 2, W. O. Galbreath; 3, A. T. Cushing; 4, A. F. Schramm; 5, H. E. McClintock (T. 522). The figures used in arriving at cost of reproduction less depreciation are the figures contained in the last column under the heading "Av." They are the mathematical average of the five preceding columns. The instructions given these five men were as follows: I gave them a list of the buildings, a blank list, and told them to observe what the percentage condition of each building was, not to talk with any of the other four men nor to show the results of their work until they were all done, and I had tabulated the results. No further instructions were given. Mr. Cushing and Galbreath were in my employ at the time the 1927 appraisal was made. I do not recall that they fixed the depreciation in the way I did it in the 1932 appraisal. I think that as each man completed his portion of the work he expressed his idea of the condition percentage of that portion, but no effort was made to get (T. 523) a composite view of all the engineers on every building, such as was done at this time. Those were the only two of the five who assisted me in 1927. The condition percentage which I used in the 1927 appraisal was not the average of the opinions of those two gentlemen. My own personal opinion of the condition percentage was used in the 1927 appraisal. In the 1929 appraisal Mr. Schramm was added. I testified in the 1929 hearing that Mr. Schramm and Mr. Galbreath were the two engineers that assisted me at that time in fixing the condition percentage (T. 524). If I did so testify, and the record will show, that expressed the true facts. My own personal opinion of the condition per- [fol. 1015] centage was reflected in the percentages used in 1929. As shown by Government Exhibit No. 114, two or more engineers going out and viewing the same property

will not always arrive at the same condition percentage. The figures at which they would arrive would sometimes agree and many times differ considerably. That is due partly to the personal element which enters into the situation and partly to the ability to see all the elements and to convert what a person has seen into a percentage. One person looking at a building will see some defects that another person will not see, and those are the reasons for the differences. These men spend about one day and a half or two days viewing the property and making this report. In addition to that, of course each man had the benefit of checking the inventory so that he really spent more time on the property than that, but in this specific thing he spent about one day and a half to two days (T. 525).

In the 1932 appraisal I found the stockyards well maintained but observed some deferred maintenance because of preparations to rebuilding a certain section, or for one reason or another, but not to any great extent (T. 526).

In this appraisal I depreciated my overheads, and in the last appraisal I did not. The cause of the change was that I observed that the Secretary of Agriculture in his findings depreciated overheads, and I conformed to the prior decision of the Secretary.

The following is a description of the method that I would employ in arriving at the depreciation or condition percentage of the Exchange Building, for example: I would make a tour of inspection and examine the building, both inside and out, from basement to attic. I would observe the elements of obsolescence that had occurred. For instance, the elevators, while they are in operating condition and not [fol. 1016] of modern type no doubt, would be replaced with modern type of higher speed. I observed an open stairway which, in accordance with modern practice, is not being incorporated in the design of buildings. I would observe the condition of the floors, the walls, and the woodwork. I would examine the toilet facilities and from the observation of the entire building would arrive at what I considered the condition percentage of the building (T. 527). I would wait until I had finished the tour of inspection before I finally put down my figures. I might make notes as I went along and I might not. It would not be essential. I would apply the same method to the depreciation of the pen areas.

The five men I spoke about, who appear by number in Government Exhibit No. 114, followed this same method.

[fol. 1017] Depreciation Reserve

Depreciation and Composite Life Tables

At the time I made the depreciation and composite life table appearing in Government Exhibit No. 114, it represented my best judgment on the subject. After taking into consideration all the questions asked on direct examination by Mr. Bohannan, it still represents my best judgment. I do not desire to change it in any way. In making this table I took into consideration what I considered to be proper [fol. 1018] consideration of all the facts mentioned by Mr. Bohannan (T. 533). I think the table represents the fair composite life of the property of the St. Joseph Stock Yards Co. as of August 1, 1932.

[fol. 1019] I stated that I made no separate and distinct allowance in my appraisal for going concern value. It is possible that an article of property could have a cost which might be either greater or less than its value. Cost and value are not necessarily synonyms. In my appraisal I was [fol. 1020] technically seeking to obtain costs (T. 540). My figures attempt to set up my opinion of the value of reproduction cost of property and the reproduction cost less depreciation. I do not attempt to set up market value for the property. Values are established by me on the basis of the market value of the materials and labor, but that is not the market value of the property. It is the cost of reproducing and the cost of reproducing less depreciation. I valued the property as I found it, and, of course, the property is mostly used in connection with a going business (T. 541). Assuming that the St. Joseph Stock Yards had ceased to do business, had no business in prospect, ceased to be a going concern, the pens, fences, paving, and matters of that kind would have little or no value, market value depending partially on income. If someone undertook to reproduce the St. Joseph Stock Yards in a desert where there were no railroads, no roads, no livestock, and no business, that would tend to increase the cost due to lack of labor supply.

The reason no allowance was made by me for deeper cuts or deeper fills was because the land is appraised at its present level. If any major portion of it were either excavated

or filled, that portion would not be apparent to an appraiser of land at this time, and the land is, or will be, appraised at its present elevation (T. 542). If I had allowed the cost of filling in holes, ravines and things of that kind in my construction cost, and then the land appraiser appraised the land in its present improved condition, the practical effect would be duplicating values. The reasons for using 2-inch sand filler is because brick ordinarily are placed with a 2-inch filler, or bed, for the brick. That is the customary practice. It is good engineering practice. There is no practice with reference to the thickness of concrete. It depends largely upon the nature of the traffic which the pavement [fol. 1021] will have to bear. The reason I used different thicknesses of concrete was because I found different thicknesses. Gumbo is a type of clay which is more difficult to penetrate than ordinary clay. If the soil were gumbo, it would save the cost of shoring, which I figure on depths greater than 6 feet (T. 543). That is the reason I stated I would make no change in the price.

Recross-examination:

In the various exhibits I have prepared I have made an estimate as an engineer of the cost of reproducing the physical property of the St. Joseph Stock Yards Company and of the same cost less depreciation. There is no difference in the mechanical operation of finding the cost of reproduction new of a property that has a business and the identical property that has no business. The same is true of cost of reproduction less depreciation. I followed the same methods and principles in this appraisal as I followed in my 1929 appraisal.

Audit Prepared by Government Accountants

H. E. Bufkin, a witness, called by the Government, being first duly sworn, testified in substance as follows:

Direct examination:

I am the same H. E. Bufkin referred to on pages 111 and 112 of the printed abstract of record which is a part of the record in this proceeding (T. 546). I am still field auditor

for the Packers and Stockyards Division, United States De-
[fol. 1022] partment of Agriculture. Since the prior hearing I have made audits for rate hearings at Kansas City, Omaha, and Sioux City, and am still working on the audit at the latter place. These audits were for hearings involving the rates of stockyard companies (T. 547). I had assistance in preparing the audits to which I referred. Between the latter part of August, 1932, and November 25, 1932, I made an audit of the books and records of the St. Joseph Stock Yards Company covering the years 1927, 1928, 1929, 1930, 1931, and eight months ending August 31, 1932. An additional audit was made about November 25 covering the month of September, 1932, and in the last two weeks I have prepared an audit for the last three months of 1932, bringing the full year of 1932 into one yearly audit. All of this auditing was done under the direction of Mr. Bachmann, chief accountant for the Bureau of Animal Industry, Packers and Stockyards Division (T. 548). I was connected with these three audits as senior accountant, having immediate supervision and control of the making of them, under the general direction and supervision of Mr. Bachmann. In the first audit I was assisted by Messrs. Bolas, Hart, Muse and Baughman, who are accountants with the Bureau of Animal Industry. Messrs. Hart, Baughman and Muse assisted me in the audit referred to on page 112 of the abstract of record of the first hearing in this case (T. 549). Mr. Bolas assisted me in the audit covering September, 1932. Mr. Bachmann and I prepared the audit covering October 1 to December 31, 1932.

Government Exhibit No. 121-A is the audit for the years 1927, 1928, 1929, 1930, 1931, and eight months ending August 31, 1932. Government Exhibit No. 121-B is the audit covering the month of September, 1932, and Government Exhibit No. 121-C is the audit covering October 1 to December 31,
[fol. 1023] 1932. They were made from the ledger and subsidiary records in connection with the ledger which are payrolls, vouchers, bills, monthly statements prepared by the Stock Yards Company, and all sources of record that we could get hold of (T. 550). Those were the records of the St. Joseph Stock Yards Company, respondent in this proceeding. The examination was made in the office of respondent, and the records were submitted by officers and employees of respondent. In the process of auditing these

books the other accountants and I made rough pencil or other notes or work sheets for each of the five years to begin with as a set-up and trial figures for all this period, and branched out from those figures and finally wound up with the report as prepared. By "trial figures" I mean the Stock Yards Company's trial balance figures. We took figures from the books and placed them upon the work sheets and analyzed them (T. 551). When those original figures were analyzed they were restated in order to show on this report as nearly as possible comparable figures for each of the years. These reports, Government Exhibit- Nos. 121-A, 121-B and 121-C, were copied from the figures which were set up. I have checked, examined and compared the three proposed exhibits and find them accurate (T. 552). Taking the three exhibits together they constitute, in my opinion, a true and accurate reflection in summary form of the financial transactions of respondent during the years 1927 to 1932, both inclusive, as shown and reflected on the books and records of respondent(T. 553).

Government Exhibit No. 122 covers the number of head of cattle, hogs and sheep purchased by traders at the St. Joseph Stock Yards from August 1 to December 31, 1932, and was prepared by me from the records of the traders operating at the market. By "traders" I mean people [fol. 1024] designated in the Packers and Stockyards Act as dealers. The traders or dealers are designated by number (T. 554). The reason this exhibit covers only October 1 to December 31, 1932, is because the first nine months are included in Mr. Christensen's report. That report does not show the names of the traders but shows them by numbers. I have the names of the traders whereby I can identify them by reference to the numbers shown on Government Exhibit No. 122 (T. 555). By the use of the word "traders" I mean traders and order buyers. The figures on Government Exhibit No. 122 do not represent all the purchases made for the period indicated by all traders and all order buyers. They represent only trading accounts. There are some other purchases made during this period on the St. Joseph Stock Yards by order buyers which are not shown on the exhibit.

Each of the respective years 1927 to 1932, inclusive, are set up separately in Government Exhibit Nos. 121-A, B

and C, and each year is set up on a basis comparable with the set-up for each of the other years (T. 556).

Witness then produced the work-papers to which he had referred (T. 557).

Cross-examination:

Government Exhibit No. 122 shows purchases by traders. It does not follow that the traders resold this livestock on the St. Joseph market (T. 566). As to whether there is a difference between traders and order buyers on the exhibit, they are all traders, that is, the figures represent trading accounts. No order buying on commission is shown (T. 567). I could not tell by looking at Government Exhibit No. 122 how much resale yardage was paid by these various firms, numbers 1 to 49, inclusive, it is possible they [fol. 1025] may have paid resale yardage on every head of livestock shown thereon. I did not go into that feature of the matter.

In the Government audit I have restated the books of respondent in the matter in which I wanted them. I have made my own allocation of them for every year and as nearly as possible the same allocations each year (T. 568).

JOHN J. BACHMANN, a witness called by the Government, being first duly sworn, testified in substance as follows:

Direct examination:

Qualifications

I am the same John J. Bachmann referred to on page 113 and succeeding pages of the printed abstract of record which is a part of the record in this proceeding (T. 569). I am still in charge of audits and accounts, Packers and Stockyards Division, Department of Agriculture, Bureau of Animal Industry, and have been continuously since the prior hearing. Since that time I have been in charge of examinations and testified in the Denver Stockyards rate case, Kansas City Stockyards rate case, National Stockyards, Omaha Stockyards, and supervised the preparation of the audit for contemplated hearings at the Sioux City Stockyards. I have been in charge of commission rate hear-

ings at Sioux City, Iowa; St. Joseph, Missouri; Kansas City, Missouri; (the first hearing and the rehearing) National Stockyards, Illinois; St. Paul, Minnesota, and am now in preparation for the hearing at Chicago which is entering its second phase. I have also been in charge of the investigation of the Seed Loan Division at Memphis, Tennessee, for the Department of Justice and the Secretary of [fol. 1026] Agriculture, and have worked with Haskins & Sells in preparing a system of accounts for the Refinance Corporation covering Seed Loans, that work covering the Washington headquarters office, the Minneapolis, St. Louis, and Dallas, Texas offices. I have been in general supervision of the work of my own division at the office at Washington (T. 570). By the second phase of the Chicago audit I mean we made a statistical study of about 110 firms at Chicago for a conference on the question of commission rates. No agreement was reached. There has been some lapse of time, and so it was decided that an examination would have to be made again covering the entire year of all of the commission firms and all of the order buyers at the Chicago market for the hearing. We are in the midst of that work at the present time.

I heard Mr. Bufkin describe the audit that has been made in the year 1932 of the books and records of the St. Joseph Stock Yards Company. I had general charge and supervision of that audit. In addition to the general charge and supervision and assisting Mr. Bufkin in the audit for the last three months of 1932 I have prepared a supplemental report setting forth the working capital and the adjustments which I think are necessary to set up the operating profit of the company for rate-making purposes (T. 571). This set-up is in tentative form, subject to final adjudication on the part of the Secretary. It is also tentative as far as I am concerned because I did not have an exact outline of what was going to be considered as used and useful by Mr. Christensen. I therefore followed in that respect mainly the Secretary's last order and made eliminations, not an exact computation, but a rough calculation based on the exclusions in that order. The tentativeness of my supplemental report is due to the matters just stated. I do [fols. 1027-1029] expect to set down principles which will govern the adjustments to be subsequently made (T. 572). The principles which will govern the adjustments and the

principles which have guided me in making this supplement and the conclusions and recommendations in this supplement constitute my mature judgment after considerable time spent in studying the facts contained in the Government audits and such other data which I had.

[fol. 1030] Income for Rate-Making Purposes

Page 2 of Government Exhibit No. 124 is headed "Income for the year 1931." I have used 1931 as a guide only. The calculations which are made for the adjustment of income to expense in my opinion should be made for all of the years 1927 to 1932, inclusive, following the principles which will be set forth for 1931. By reference to page 2 it will be seen that there is one addition to the income as taken from the audit, Government Exhibit No. 121-A. That is the same item that was discussed (T. 579) at the previous hearing. The principles have not changed with respect to that item since that time. The items shown under "Exclude," should be eliminated on the basis of Mr. Christensen's report. I did not have Mr. Christensen's ideas in their entirety at the time this calculation was made and could not make it in complete and final form to reconcile with Mr. Christensen's recommendations. There is one exception to that in the eliminations and that is the amount of interest income. The reason for eliminating that has been stated at the time of the prior hearing, and the principles governing that have not changed. Page 4 of Government Exhibit No. 124 supports those eliminations in part covering yard leases and rentals of outside stockyard industries. The eliminations for all other years are to be made in accordance with the final determination of what is used and useful. The last item, "Yardage on Trading Transactions," was inserted just to call attention to the fact that (T. 580) the Secretary may in his final decision include yardage on trading transactions in some way or other. That is to be adjusted by way of addition to income if the final decision is to include such yardage (T. 581). There [fols. 1031 & 1032] is in the record the amount of total resales on which respondent collected revenue. I do not know of any figures in the record which show the resales made by traders on this market as a whole. There is not shown the amount of resales made by traders on this market upon which half yardage was not paid.

[fols. 1033 & 1034] Taxes

The next item is taxes. There is included in Government Exhibit No. 124 a detail of the taxes which have been eliminated and the taxes which are paid by the company. Statement No. 7 of Government Exhibit No. 121-A shows the legal descriptions of the properties on which taxes have been paid. These are statements 5, 6 and 7 from pages 359 to 375 inclusive. Further details with respect to the tax account are on pages 178 to 180 of Government Exhibit No. 121-A. The Company pays State and county taxes on its real estate (T. 586), a franchise tax, city tax, and real estate and personal property, State income tax, and Federal income tax. For the future the Federal income tax should be calculated on the basis of 13¾ per cent, which is the new law, taking into consideration, of course, such taxable income and allowable deductions which are to be finally included in the fair income and expenses for rate purposes. The State income tax is to be calculated on the basis of the State of Missouri taking into consideration the same fair income and expenses (T. 587). The eliminations which should be made in State, county and city taxes are to be made in the light of the property not used and useful as finally determined. Franchise taxes are paid on the basis of 50 cents per thousand on all the assets, and is shown in that balance sheet of the transcript (T. 588) the company taking the fixed assets at sound value. Any adjustments that are made on that amount must be made in the light of the assets which are to be allowed in the rate base. Taxes on properties which are not used and useful should not be included in the fair and reasonable expenses.

[fol. 1035] Repairs

There is no particular comment necessary with respect to any items from there on down to repairs of yard structures which is six items from the bottom of the page. Page 256 of Government Exhibit No. 121-A shows that in 1928 the Company charged as repairs—replacements of the roof of the hog yards in the amount of $4,445.93 and the roof of the sheep shed in the amount of $3,232.43. Those were charged as current repairs rather than against the depreciation reserve. Those were the only two that particularly came to my notice. I cite them as examples (T. 591). I

know of no item which can be designated strictly as a repair under the definition of that word which is not a replacement except one and that is welding. All other items that came to my mind are susceptible to the definition of replacements rather than repairs. I have made rather a thorough study of that and have gone so far as to look up the definition of both words in standard dictionaries of all kinds and find the term "repairs" includes replacements. If restricted to the exact definition of repairs there are few items which come under its comprehension. Accountants sometimes seek to draw a distinction between repairs and replacements. They set up two arbitrary rules. One is that the expenditure, if it has a life of more than one year, should not be classified as a repair. The second is that there is an arbitrary level set under which items are classified as repairs, and over which items are classified as replacements. That level may be $25.00, $50.00 or $100.00, wherever experience shows that items as a general rule are minor in nature or major in nature (T. 592). There is no practical benefit to the management of the property or the keeping of the accounts of the company that arise from setting up these arbitrary rules to distinguish repairs from replacements except that from an accounting viewpoint and the fact viewpoint such a distinction must or at least should be made. However, all those items can be [fol. 1036] classified under a general heading of maintenance of plant. In respect to accountancy for rate determination I am of the opinion that a sum should be allowed for the maintenance of the plant no matter how classified, whether repairs, replacements or depreciation. Whatever comes under the general heading of maintenance of the plant should be allowed for all items together. That eliminates the necessity of having to determine what constitutes repairs and what constitutes replacements.

The next item is repairs of outside property. The inclusion there represents repairs to the Transit House. That necessarily will follow the final determination of whether or not the Transit House should be included (T. 593). That item is $781.91. The details of that account are to be found on pages 272 and 273 of Government Exhibit No. 121-A. All expenses and income of the Transit House, in so far as it was possible to do so, have been segregated. The income will be found under the rent item. The expenses will be found under depreciation, insurance, taxes and repairs.

The next item is the repairs of feeding facilities. That elimination is to be made on the basis of the final determination of used and useful property. The same comment applies to the item "Miscellaneous outside real estate expenses," $2,514.54 (T. 594), and to the next item "Casualty Insurance on Outside Real Estate," of $36.94. Whatever is done with any of that property will govern as to whether it should be included or excluded. Bad debts have been included here because they are not in the strict sense of the word bad debts, but are adjustments of income which have been set up on the books as accounts receivable. They were not finally received, and it is in the nature of an adjustment in that account receivable. The same applies to bad debt income collections on items of that kind made subsequent to the time that the item was written off on the books.

[fol. 1037] The bond issue expense in my opinion is a part of the cost of getting money, and as such is a part of the return and should be handled in the same way that the discount on bonds is handled. It should not be considered as a fair and reasonable expense for rate-making purposes, but should be considered as a part of the rate of return (T. 595).

GOVERNMENT EXHIBIT No. 124

Below are pages 2, 3 and 4 of Government Exhibit No. 124:

St. Joseph Stock Yards Company

Income—Year 1931

	Total	Additions	Include	Exclude
Yardage	463,326.00		463,326.00	
Gross Sales—Hay	88,297.77		88,297.77	
—Corn	165,034.47		165,034.47	
—Oats	1,993.68		1,993.68	
—Bedding	10,432.54		10,432.54	
—Milled Feed	24,442.42		24,442.42	
Hog Pen Bedding	2,755.65		2,755.65	
Milling Feed Revenue	9,385.63		9,385.63	
Loading & Unloading	28,422.00		28,422.00	
Exchange Bldg.—Off. Rent	39,641.05		39,641.05	
Exchange Bldg.—Garage Rent	3,262.36		3,262.36	
Exchange Bldg.—Miscl. Revenue	92.27		92.27	
Weighing Cars	5,238.27		5,238.27	
Stock Car Service	293.25		293.25	
Cleaning, Sanding & Disinfecting	144.58		144.58	
Manure Sales	158.47		158.47	
Car Partition, etc.	423.98		423.98	
Immunization Plant Revenue	3,664.15		3,664.15	
Truck Washing	732.65		732.65	

St. Joseph Stock Yards Company—Continued

Income—Year 1931—Continued

	Total	Additions	Include	Exclude
Yard Truck Revenue	.....		.....	
Tractor & Trailer	21.75		21.75	
Company Barn	.....		.....	
Estrays	426.80		426.80	
Miscellaneous Income	420.02		420.02	
Yard Leases & Rentals	1,904.69		1,804.73	99.96
Shoes (Employees) Sold	.....		.....	.....
Feeding Facility Yardage	7,376.35			7,376.35
Rental of Feeding Facilities	789.47			789.47
Rental Tracks & Rt. of Way	.....			.....
Rental Outside Real Estate Ind	775.00			775.00
Rental Outside Stock Yards Ind	2,970.00		1,290.00	1,680.00
Rental Outside Houses	97.58			97.58
Rental Outside Ground	1,329.22			1,329.22
Dipping Income	14.10		14.10	
Water, Electricity & Heat	2,686.99		2,686.99	
Interest	7,436.99			7,436.99
Bad Debts	.06		.06	
Sales Pavilion Income	.....		.....	.....
Dividends, Casualty Insurance		5,500.00	5,500.00	
Yarding on Trading Transactions		.....	.....	
	873,990.21	5,500.00	859,905.64	19,584.57

[fol. 1038] St. Joseph Stock Yards Company

Expenses

Year—1931

	Total	Additions	Include	Exclude
Office & Management Payroll	25,155.88		25,155.88	
Miscl. Adm. Expense	6,425.82		140.48	6,285.34
Officers' Travel & Entertainment	547.27		547.27	
Legal & Collection	1,608.95		1,608.95	
Pensions	2,525.00		2,525.00	
Donations & Subscriptions	2,595.11		317.16	2,277.95
Taxes	57,663.51		51,028.45	6,635.06
Depreciation	123,066.12		50,000.00	73,066.12
Insurance	14,430.61		12,980.45	1,450.16
Valuation Hearing	3,479.43			3,479.43
Bond Interest	48,517.19			48,517.19
Bond Discount	6,241.24			6,241.24
Office Rent	1,782.00		1,782.00	
Office Supplies	709.88		709.88	
Office Expense	122.23		122.23	
Office Postage	242.62		242.62	
Telephone & Telegraph	692.82		692.82	
Store House Expense	1,232.72		1,232.72	
Engineering	6.83		6.83	
Fiscal Agents, Registrars, etc.	314.06		314.06	
Yard Pay Roll	132,239.82		132,239.82	
Yard Cleaning & Disinfecting	20,123.07		20,123.07	
Yard Current	4,342.24		4,342.24	
Yard Casualty Insurance	4,147.50		4,147.50	
Estrays	852.50		852.50	
Water, Elec. & Heat	13,448.91		13,448.91	

St. Joseph Stock Yards Company—Continued

Expenses—Continued

Year—1931—Continued

	Total	Additions	Include	Exclude
Company Barn	1,891.79		1,891.79	
Yard Truck	247.33		247.33	
Cost of Hay Sold	41,034.99		41,034.99	
Cost of Corn Sold	106,480.78		106,480.78	
Cost of Oats Sold	1,149.67		1,149.67	
Cost of Bedding Sold	3,042.44		3,042.44	
Cost of Milled Feed Sold	20,877.12		20,877.12	
Cost of Hog Pen Bedding	187.21		187.21	
Milling Feed Expense	1,905.76		1,905.76	
Grain Elevator	1,073.95		1,073.95	
Weighing	3,812.83		3,812.83	
Dipping	42.05		42.05	
Car Partitions, etc.	253.29		253.29	
Immunization Plant	870.71		870.71	
Repairs Yard Structures	14,457.73		14,457.73	
Repairs Water Lines	2,091.28		2,091.28	
Repairs Sewers	1,393.55		1,393.55	
Repairs Paving	1,371.98		1,371.98	
Repairs Hay Barns	188.20		188.20	
Repairs Equipment	652.60		652.60	
Repairs Outside Property	1,648.11		781.91	866.20
Repairs Exchange Bldg.	2,493.85		2,493.85	
Repairs Feeding Facilities	608.04			608.04
Payroll—Traffic Dept.	7,371.00		7,371.00	
Solicitors' Salaries—Traffic Dept.	13,600.86		13,600.86	
Casualty Insurance—Traffic Dept.	2.80		2.80	
Postage— Traffic Dept.	361.82		361.82	
Printing & Stationery—Traffic Dept.	301.54		301.54	
Telephone & Telegraph—Traffic Dept.	1,832.51		1,832.51	
Miscellaneous—Traffic Dept.	222.85		222.85	
Solicitors' Expenses—Traffic Dept.	11,517.16		11,517.16	

[fol. 1039]

	Total	Additions	Include	Exclude
Advertising	3,583.32		3,583.32	
Stock Show	3,069.67		3,069.67	
Exchange Bldg., Labor	8,800.27		8,800.27	
Exchange Bldg., Casualty Ins.	287.97		287.97	
Exchange Bldg., Elec., Water, Heat	4,946.03		4,946.03	
Exchange Bldg., Supplies	1,775.92		1,775.92	
Truck Washing Expense	231.64		231.64	
Sale Pavilion Expense	.....		.....	
Miscl. O. R. E. Expense	2,514.54			2,514.54
Casualty Insurance, O. R. E.	36.94			36.94
Tractor & Trailer Expense	745.97		745.97	
Audit Expense	651.00		651.00	
Repairs—Furn. & Fixtures	.....		.....	
Bad Debts	31.29		31.29	
Cost of Shoes Sold (Employees)	.....		.....	
Bank Exchange	.....		.....	
Manure Sales Expense	30.25		30.25	
Bond Issue Expense	1,000.00			1,000.00
Interest	.....		.....	.....
	$743,203.94		$590,225.73	$152,978.21

Depreciation Reserve

Depreciation is divisible into two parts. The first is actual depreciation which results in wear, tear, rust, rot, decay, inadequancy, and obsolescence, and the accrual of that actual depreciation in the asset itself to the extent of 100 per cent when it is retired. The second part of the question of depreciation is the provision which is made under managerial policy, and (T. 595) on the books of the company, and the accrual of this provision on the books to meet the actual depreciation which is being accrued in the asset.

To discuss first the actual depreciation: actual depreciation is intimately related with repairs and replacements, that is, the policy of the company with respect to a normal or abnormal expenditure for repairs or the charging of replacements to repairs has a vital effect upon the accrual of actual depreciation. Actual depreciation does not accrue steadily in this sense, that it is of an equal amount in each year. It may be heavy in some years due to climatic conditions. It may be less in other years, due to a greater expenditure for repairs, due to major replacements in part, and for other reasons.

[fol. 1040] Replacements and repairs may maintain some assets for an indefinite period of life, whereas, other assets cannot be maintained in that way, although their life can be extended far in excess of the average life of assets of a similar kind.

Now, actual accrued depreciation can be determined as to amount in two ways: by the observation of an individual qualified to determine how much it is during the life of the asset, and by the observation of an ordinary layman when it has accrued to 100 per cent; that is, the ordinary layman can see when a building is being retired or a structure is being retired, and, in that way, know that the asset is 100 per cent actually depreciated.

Now, to study the actual depreciation of the St. Joseph Stock Yards Company, from the viewpoint of how much has accrued in the assets which (T. 596) are in existence at the time an appraisal has been made: I find that in 1922 an appraisal was made by the American Appraisal Company for the St. Joseph Stock Yards. According to this appraisal, the actual accrued depreciа-

tion which was determined apparently by observation was $621,171.27. This, as stated, took place in 1922. In 1929, there were two appraisals made, one by Mr. Henrici and the other apparently by Mr. Kosters. In 1932, there were again two appraisals made by the same individuals, as far as I know. Taking Mr. Henrici's two appraisals, the actual depreciation determined by observation, which had accrued in all the assets existing at that time, was $641,464.

In 1932, the amount is $648,631. For Mr. Kosters, in 1929, the amount was $535,907, and, in 1932, was $337,437.

Now, the amount of depreciation apparently that has accrued, if we take the American Appraisal Company and Mr. Henrici, is about $20,000 between 1922 and 1929, and [fol. 1041] about $27,000 between 1922 and 1932. It would equal, on an average, somewhere between $2,500 and $3,000 a year.

If we take and compare the American Appraisal Company with Mr. Kosters' depreciation determined by observation, apparently the condition per cent has been bettered in both of the periods, from 1922 to 1929, and from 1922 to 1932. The amount of that betterment in condition (T. 597) from 1922 to 1929 is about $85,000 and from 1922 to 1932 is about $285,000.

Now, in addition to the depreciation actual, which has accrued in the assets, there ought, of course, to be taken into consideration the actual history of the company with respect to retirements which have been made during the life of the assets. In other words, the history of those assets should be considered. The actual retirements which have been made from the asset accounts of the company from 1916 to 1932 were $44,797.70. The details of these retirements will be found on pages 384 to 387 of Government Exhibit No. 121-A. From 1922 to 1932, there were retired from the stockyards buildings and improvement account $55,682.23. In the same period of time, there was retired from the buildings outside account, $105,518.70; and the Exchange Building and garage, $6,738.

The stockyards buildings and improvement account retirements will be found on pages 25, 26, 27 and 28 of Government Exhibit No. 121-A. The retirements on buildings outside real estate will be found on pages 30 to 32. On the Exchange Building and garage, they will be found on

page 33. And the retirements on equipment, totaling for that period $33,552.17, will be found on pages 35 to 49.

The total retirements made from the asset accounts for [fol. 1042] the years 1916 to 1932 were $239,550.80. That covers all property whether used and useful or not used and useful. The average for a year would be about $15,000. Now, included in those retirements are some fire loss retirements. They total, as best I can determine them, about $25,000. If we eliminate from the total retirements made fire loss retirements and the retirements on properties not used and not useful, the amount will decrease to about $10,000,—between $7,000 and $10,000, for such assets which are used and useful. Now, in my opinion, the retirements, plus the depreciation accrued in the assets which are in existence and which depreciation accrual is determined by observation, is the guide which should be in the minds of those who are setting the provision for depreciation to be made on the books of the company. In other words, the provision for depreciation should be kept in line with the actual depreciation that is being suffered and the retirements which are being made.

Now, to discuss the second phase of depreciation, that is, the provision which is to be made under managerial policy and on the books to meet this actual depreciation: in order to provide for depreciation, we must have three things: a base, a rate and a method of accrual. There is no question as to what the base should be for rate making purposes. It is reproduction new value, and that is the base which has been used in my calculations. I use reproduction new value as a synonym of cost of reproduction new (T. 599).

There have been other bases used for depreciation, but not, in my opinion, for rate making purposes so much, although the court, in the Baltimore Street Railway case, apparently indicated that the sound value of the assets would be a proper base. However, if that is the case, we would have to use a remaining life table, that is, the remaining life in the assets for which the sound value has [fol. 1043] been determined. Also, the Interstate Commerce Commission uses a cost base. They use straight line on cost. I don't think that conforms to the ruling of the Supreme Court. I mean actual cost as best as they can determine it as distinguished from cost of reproduction.

That is the way I read the latest decision made by them and I think written by Commissioner Eastman.

The rate to be applied to that base is determined from the life tables. That is, if it is determined that an asset has a life of 20 years, and we wish to depreciate or to allow a depreciation reserve for the full value of the asset, or 100 per cent, the rate to be applied to the base would be 5 per cent. Now, these life tables, as stated by Mr. Henrici, are based on general experience. They are in the nature of a general proposition and a general proposition is, of course, always subject to correction for specific experience (T. 600). A general table may not be applicable, as a whole, to a particular company, unless the history and the experience of that company shows that the general experience is reconcilable to the specific experience of the company. In other words, if anything should be modified, it is the life tables that should be modified in the light of the actual experience. The method of accrual may be straight line, sinking fund, or about three or four other methods which are used but which will not be discussed here. I will discuss here only the straight line, the sinking fund and the retirement methods.

Comparison of Retirement and Straight Line Methods

The retirement method is sometimes used as a method of accrual. Now, the straight line method, using Mr. Henrici's calculations, provides an amount for depreciation annually of $113,492 on all property, whether used and useful or not used and not useful. The details for that are [fol. 1044] to be found in Government Exhibit No. 124. The amounts which have been provided for an allowance of depreciation on the books of the company are shown in Government Exhibit No. 124 under the heading of "Provision for Depreciation Reserve Account Per Books Years 1915 to 1932 (T. 601)".

Reference to that page will show that there has been provided for depreciation allowance on the books of the company from 1915 to 1932 by a charge against operations, $1,515,408.70. At the time the appraisal was made in 1922, there was provided against appreciation an amount of $231,223.52, a total provision in those years of $1,846,-632.22. Particular attention is directed to the amounts which have been provided annually since 1923. All of

those amounts run about from 120 to 130 thousand dollars a year. The company on the books uses the straight line on book value apparently. That book value, of course, since 1922, has been the appraisal value as determined by the American Appraisal Company. If we compare the straight line allowance as determined by Mr. Henrici, or as set up on the books of the company, with the actual experience of the company with respect to actually accruing depreciation and replacements, we find that the amount provided for on the books cannot in any way even remotely be reconciled with the actual experience. In other words, the amount provided for by the straight line method on reproduction new or book value is far in excess of what the actual experience shows the requirements to be (T. 602). I am speaking now of the depreciation provided by the company on the books and also of the depreciation which would be provided by the straight line method using Mr. Henrici's estimates of life; in other words, my opinion is that the straight line method of making provision for the actual depreciation is out of the question. It is far [fol. 1045] in excess of what the company needs to maintain its plant when we consider the retirements and replacements and repair policy of the company. That applies both to the straight line method employed by the stockyard and the straight line method which would be employed in Mr. Henrici's estimate.

I don't particularly criticise the life that is used there or the amounts which are determined as a result of that life for this reason, that those tables are general experience and in so far as they are general experience they are a starting point, but they are to be tested in the light of the specific experience of the company and to be modified accordingly.

To give examples of why I feel that the straight line method is not reconcilable as to the amount provided for depreciation by it with the actual needs, if we take first the pens, fences, runways, and other yard structures, we will find that they total in amount of over a million dollars. During the period 1916 to 1932, the actual retirements have been on this particular class of assets about $40,000. The condition per cent has not (T. 603) changed very much during the past ten years. However, during that time there has been provided an allowance for depreciation in excess

of $600,000. The Exchange Building is being depreciated on the books over a period of about 30 years. It was built and opened in 1898. If the life table used by the company were correct, then this building should have been retired five years ago. The provision made on the books does not give consideration in its accrual to the income which may be realized from the installment provision set aside each year for depreciation. The condition per cent of the Exchange Building has not changed appreciably in the last ten years. The same comment made with respect to the Exchange Building can readily be applied to the Transit [fol. 1046] House and the Exchange Annex. Also to the sewer mains and the water mains. In other words, the provision which has been made for depreciation on books of the company nowhere reconciles in any degree with the actual retirements or the actual changes in condition per cent. Of course, it is not expected that it will, that the provision will keep pace at all times with the actual accruing depreciation. In general practice, the provision is made for adding amounts similar in each year, whereas the actual depreciation varies from year to year. However, over a period of time the two should be harmonized at least in some measure. The condition per cent in the appraisals as stated in composite has not changed very much during the period of ten years. However, during the same period of time, there has been made provision for depreciation on the books of the company to the extent of about one and a quarter million dollars without considering (T. 604) income on such provision. Government Exhibit No. 124 shows the percentage of provision for depreciation in comparison with the values as shown on the books for the specific assets. Stockyards buildings, for instance, are depreciated on the books to the extent of 65 per cent; buildings, exchange and outside, to the extent of 53.4 per cent; equipment to the extent of 85 per cent; and the total of all assets to the extent of 66.5 per cent. I wish to make a correction there; the last paragraph on the page headed "Provision for depreciation reserve account," instead of being equipment should be all assets.

Sinking Fund Method

The straight line method, in my opinion, being out of the question for this particular purpose, there appears to be

left only the sinking fund method or the method of actual [fol. 1047] retirements plus the actual accrual of depreciation as determined by observation. To discuss first the sinking fund method, it has one advantage, that is, it does come closer to the facts than any method except the actual retirement method. It gives consideration to the fact that the company gets the money provided for by a depreciation allowance on an installment basis before the asset is actually retired, and invests this money and secures on it a return. Unless this earning, that is, the earning on the installment payment for depreciation allowance is given consideration, an otherwise fair rate of return becomes an abnormal or an unfair rate of return. This is demonstrated by two examples set up in table form in Government Exhibit 124, being headed "Comparison of straight line and sinking fund method of depreciation." The (T. 605) first example takes an asset which has not been appraised during the course of its life, and the second takes an example which has been appraised during the course of its life. These examples show that giving consideration to the earnings which are made on a sinking fund provision, adding that earning to a fair rate of return on a rate base which does not change, and the fair rate of return becomes abnormal. I have assumed for purposes of this example a fair rate of return of 7 per cent with the earnings on the sinking fund installment, that 7 per cent return becomes a return slightly greater than 11 per cent. In other words, to avoid such a situation, consideration must be given to the fact that depreciation allowance is made on an installment basis before the asset has reached a depreciated condition per cent of 100, that this money is invested and that a return on it is gained by the company. I have made a calculation on a 5 per cent sinking fund method of depreciation applied to the straight line method amount determined by Mr. Henrici which is shown in Government [fol. 1048] Exhibit No. 124. For purposes of that calculation I have eliminated the properties not used and useful in so far as I knew them. The result is an allowance of $50,000 a year. Now, I feel that a computation made in accordance with the sinking fund method is quite liberal, and I would say that this $50,000 should represent the maximum allowance which should be made. The allowance which should be made by the Secretary, in my opinion,

should be somewhere between the amount determined on a retirement basis, about $10,000 being (T. 606) the minimum and a sinking fund basis, $50,000 being the maximum. I think that is all (T. 607). I would say pens and fences would come under the classification of assets which are maintained indefinitely by repairs, at least by repairs as classified on the books of this company, when we consider that the pens and fences of this company were in existence previous to 1916, and I include in that yard structures and that the amount of them totalled over a million dollars, and I think about a million and a half, and that during that period of years, and I have only the history from 1916 to 1932, there was retired only about $40,000 of asset value of that nature, and, if we study those retirements, we find that they are due, in some measure at least, to, I would say, inadequacy and obsolescence; it is evident that that particular asset does not come to the end of its life because of wear and tear, but it is the abnormal depreciation factor of inadequacy and obsolescence. I used the term "abnormal" in a restricted sense, which brings those retirements onto the books of the company.

It seems to me in the light of those facts that repairs maintain the assets in about its same condition per cent and that that could be done for an indefinite period of time. Now take an asset which will come to the end of its life, no matter how much is spent on it for repairs. In my opin- [fol. 1049] ion, the Exchange Building (T. 608) is such an asset. In the life of an asset of that kind, there are partial replacements made from time to time. For instance, the repair of a skylight or the replacement of it in part, the replacement of, for instance, the elevators. They would have the tendency of extending its life, and, in my opinion, sooner or later, that asset is going to come to the end of its existence, unless it is replaced in a major proportion, that is, substantially rebuilt. Of course, under a situation of that kind, its life would be continued perceptibly. However, if such a major replacement were not made, it would, in my opinion, come to the end of its life at some definite future time. I have in mind with respect to the Exchange Building, the Exchange Building at National Stock Yards. That building is about 70 years old; it has been added to and it has been remodeled in part. However, it looks to me as if that building will have to be substantially rebuilt

or replaced with a new one at some time in the future and not too far distant future. If the life of a building is estimated for a certain number of years and during that time there is a major replacement, like a new roof, it has the tendency to extend the life of the building beyond the original estimate, but, of course, the percentage of life increase would be very difficult to determine (T. 609). The Exchange Building was erected in 1897 or 1898. The company depreciated it on its books on the basis of a life of about thirty years. The effect of that would be that it came to the end of that life five years ago. In effect, that means that the company was fully reimbursed through the depreciation allowance for the cost of that building as set up on its books. I do not know, but they may not have had sufficient income in the early years to provide for depreciation reserve and did not make it up from possible excess earn- [fol. 1050] ings subsequent to that time. If the provision was made each year for that period of time at that rate then the asset was completely provided for by way of an allowance in thirty years. I do not base any of my recommendations upon the thought that the company has taken too much depreciation in the past, and should be penalized in the future. The purpose of using or considering the depreciation as set up on the books of the company is to determine the history of it because the history of it in the past is, in my opinion, the best guide as to the allowance which should be made in the future (T. 610).

I made no test as to what part of the lump allowance that is set up on the books annually was directly applicable to the Exchange Building. I should state that this is the way that the depreciation allowance was handled on the books of the company. We have no records available for our examination prior to 1916 and I do not know whether the company made provision for depreciation allowance previous to that time. Apparently, if they did, it was eliminated in some way or other, because the company began anew to set up an allowance for depreciation in 1915, as shown in Government Exhibit No. 124. From 1915 to 1922, there was an allowance set up which ran between $39,000 and $59,000. How that was determined, I do not know.

The company, as I say, set up a depreciation allowance in lump sum included in which I assume is the Exchange Building. At that time, in 1922, the appraisal was made

by the American Appraisal Company, and, from then on, the depreciation apparently was calculated on a straight line basis on the appraised value set up on the books of the company. Now, we know what the depreciation rate on the Exchange Building was approximately from 1922 to 1932. [fol. 1051] What it was previous to 1922 and what amount was provided previous to that time back to 1916, I do not know at this time (T. 611).

I do not know if 1922 was the first year that this thirty-year life which I talked about is evidenced on the books. That is, I do not have the information as to what rate was charged previous to that time. Apparently, that was the time when they began using the thirty-year life on the appraised value of the American Appraisal Company. What rate was used previous to that time I do not know. In 1922, apparently the reproduction new value was used. From the examination of the history which I have made, both from this audit and the records of the Division, I believe this property began to operate about 1893 or 1894 and that some of the assets were in existence in 1916. I know, of course, that the Exchange Building, the Transit House, and Annex were in existence at that time (T. 612). It is very difficult to determine whether any of the assets of the company had been entirely depreciated for the reason that the company set up its allowance for depreciation on a lump sum basis and it is a very difficult matter to take that lump sum and allocate it to property specifically (T. 613).

Some companies keep right on depreciating the asset-, as a whole, no matter if some particular asset has been provided for to the extent of 100 per cent. That is, of course not correct, because the allowance should be segregated by properties, and when provision has been made for a particular property to the extent of 100 per cent, allowance should be stopped on that particular property. In this company, we do not know what rates were used prior to 1922. However, if the rates which have been applied to the Exchange Building and to the pens and fences from 1922 to 1932 had been in effect for the life of those assets, undoubtedly the assets would have been provided for by way [fol. 1052] of an allowance for depreciation to the extent of 100 per cent. From that time on there should be no further allowance for depreciation. It is quite a customary practice in commercial accounting and engineering and

managerial fields that, when an asset has been fully depreciated in that way, the asset is reappraised and set up again on the books and depreciation commenced again (T. 614). The difference is usually closed into the surplus account, sometimes into the earned surplus, sometimes into the capital surplus, and sometimes into the appraised surplus. That sometimes becomes the basis or evidence of cash or stock.

When I spoke about two amounts, one $10,000, based on the retirement or actual method, and $50,000, based on the reduction of the straight line method to a sinking fund basis, those methods were independent of each other.

I do not think it would be a wise investment if they did not contemplate that it would produce an income. If it were necessary to make such an addition to the plant and they tried to secure the money (T. 615) from outside sources, it would have to be productive. There is no reason why that viewpoint should change if they took money which has been provided for by an allowance for depreciation and invest that in their plant. It does or is intended and expected to produce an income.

If this money is invested in an extension or a remodeling of the plant, it would have the effect of saving the company the cost of borrowing money for that purpose from outside sources. It could be used for a betterment, if they did not have the money of their own and money provided for by an allowance for depreciation. However, for remodeling to the extent that the remodeling is in effect a replacement, that is what the allowance is for. If the remodeling is in [fols. 1053 & 1054] the nature of a betterment, the portion that is a betterment over the actual replacement should be considered as being provided for by capital or moneys other than that provided for by the allowance for depreciation (T. 616).

I wish to direct attention to the last page of Government Exhibit No. 124, which is an analysis of the surplus in summary form for the years 1916 to 1932. It reflects the operating profits, the adjustment and appraisal, the dividends which have been paid and the miscellaneous gains and losses from sale or retirement of both depreciable and non-depreciable assets and other risk losses and gains.

In accountancy the surplus account is the difference between the total asset value on one side and the liabilities

to outsiders and to owners on the other side. In other words, if we had an asset value of $150,000, that value is owned by creditors to the extent that they have furnished current capital or fixed capital, for instance, bonds, and by the vested stockholders. For instance, in this example, we will say that the liabilities to creditors is $50,000, and the stock is $50,000, there remains a value of $50,000, after deducting these two liabilities from the $150,000. That remainder is the surplus. That varies from time to time according to the fortunes of the company (T. 617).

Cross-examination:

[fol. 1055] Feedlots

The income from the sixth item, designated as the O'Connell feedlot, would be included on page 2 of Government Exhibit No. 124 opposite the description "Feeding Facilities Yardage." For those years in which such yardage was charged or collected as a yardage charge it would appear in the audit opposite the same entry. For the years in which it was not collected as a yardage charge but as a rental it would be shown as a rental income.

Anchor Serum Company

The income received from the Anchor Serum Company would consist of milling feed revenue which comes from an [fols. 1056 & 1057] arrangement with the Anchor Serum Company whereby respondent grinds feed and makes a slight revenue on the grinding of that feed (T. 634), and a rental is shown in Schedule 31 of Government Exhibit No. 121 on the basis of $40 per month. This latter item is included on page 2 of Government Exhibit No. 124 in the item "Rental Outside Stockyards Industries, $2,970." A rental in a like amount would be included for other periods in Government Exhibits Nos. 121-A, B, and C. As long as the milling feed arrangement appeared, a like item would appear for previous years (T. 635).

I do not know the practice of respondent as to collecting yardage under Item 12-A, for feeding of livestock by the O'Connell Feeding Company, and that portion of Item 7 of Government Exhibit No. 107-A designated "Sublet to O'Connell Feeding Company." If yardage is collected for

the use of the feeding facilities it would be included on page 2 of Government Exhibit No. 124 under the heading "Feeding Facilities Yardage" (T. 636).

[fols. 1058–1061] Feedlots

In the years in which a yardage fee was collected the income from Item 24 of Government Exhibit No. 107-A would correspond to my previous statement about yardage received under Item 12-A of respondent's tariff for the use of feedlot facilities, and for those years in which it was on the basis of rental it would be shown as rental.

[fol. 1062] Allocation of Maintenance, Repairs and Other Expenses

The amount of expense which is allocated to the specific item of railroad loading and unloading is not set up in Government Exhibit Nos. 121-A, B, and C, and 124 (T. 655). From a cost-accounting viewpoint in the way allocations are made, allocations can be made of at least some of the expense items in this service or to the use of these f[illegible]ilities. It would not be made from the exhibits which have been enumerated, Government Exhibit Nos. 121-A, B, and C, and 124 and it could not be done from the books alone. The working sheets used by Mr. Bufkin would furnish in-[fol. 1063] formation which would be of assistance in making an allocation on a cost-accounting basis. Possibly all of them would be of assistance. In cost accounting one gets into the question of functional or departmental costs and, of course, all expenses are allocated to functions or to departments. Necessarily allocations have to be made on a cost-accounting basis which to the ordinary individual would appear to be arbitrary. Such bases may be the direct labor hours; for instance, the overhead allocation may be made of the total direct hours of individuals engaged in loading and unloading as compared to the total labor hours of all functions or services (T. 656). It would appear to be possibly an arbitrary basis. However, as a practical proposition it has been very frequently used and has been found fairly satisfactory. There are at least a half a dozen various bases which are generally used in cost accounting. It would require, however, some study and time to determine a basis for the distribution or allocation

of all of the various classes of expenses that would come under the heading of overhead to allocate them to the particular service or function. It would require a considerable length of time and study. To a certain degree it could be done to Government Exhibit Nos. 121-A, B, and C and 124 and the work sheets. The auditors that were engaged on this job made a rather complete analysis of the payroll for Mr. Henrici. I do not know exactly what information those work sheets embody as I have not made a particular examination of them. I do not know whether these documents show the number of labor hours which have been used up in the performance of railroad loading and unloading (T. 657). I shall search the work sheets to determine if they show the number of labor hours which have been used in the performance of railroad loading and unloading [fols. 1064–1072] and state on the record which of the documents so show. If nothing more is heard from me on the subject, it is proper to assume that the documents do not so show.

That study for Mr. Henrici, to which I referred, is contained on pages 343 to 347 of Government Exhibit No. 121-A. It does not show specifically the number of hours used in railroad loading and unloading. That study shows the pay paid to the persons enumerated on those sheets by function (T. 658), but there is no function designated "Railroad Loading and Unloading." There is nothing in my audit that shows the clerical overhead cost of railroad loading and unloading. In order to accurately determine the number of hours used in railroad loading and unloading it would not be necessary to make a time study. In the absence of a time study it would be necessary to take every individual on the payroll and discuss with him and go over his duties and, from such a study, arrive at a base for the distribution of his salary. A time study would be a method but none has been made. This other method has not been followed through (T. 659). Repairs to these particular railroad loading and unloading facilities have not been segregated in my audit. This is also true of electric lighting expense. In order to determine how much electric lighting is used in connection with these facilities, a study would have to be made of the kilowatt hour or candle power light as distributed over the yard and for the hours which they are burning. No such study has been made. An

analysis would have to be made of the repairs which would involve taking all job tickets of respondent and finding out where the work was done and what was the nature of it. Mr. Bufkin made an analysis of repairs but I do not believe his study went to that extent. Mr. Bufkin advised me that it could not be done (T. 660).

[fol. 1073] H. E. BUFKIN, a witness previously called by the Government and sworn, being recalled, testified in substance as follows:

Direct examination:

Income for Rate Making Purposes

Allocation of Maintenance, Repairs and Other Expenses

Referring to my statement to Mr. Bachmann regarding an analysis of the repair account in order to determine the amount of repairs on railroad loading and unloading facilities, I stated that I would not attempt to go into repairs to break them down over the various facilities of the stockyards for the reason that it would have taken an indefinitely long time. An investigation could be made that would enable me to break down the repair account and allocate it to the various functions in the yards, but I have made no such investigation (T. 690). It would be impos- [fol. 1074] sible to make such a breakdown of repairs to loading and unloading facilities from the present work sheets. To break down the repairs for the entire yards is a very lengthy job. In fact some of the work orders covering the repairs on different jobs may not be defined sufficiently for me to get my information. The work orders in all instances do not cover just one facility (T. 691).

Cross-examination:

The payroll does not designate any labor for loading and unloading under that heading. There is nothing of record or in the work sheets which are not of record from which I could show the amount of labor performed in cleaning and maintaining the offices in the Exchange Building used by the Stock Yards Company, separately, as opposed to the

commission men's offices. The amount of labor expended in cleaning and maintaining hallways would not be shown nor the lobby. The total labor expended on the entire Exchange building only is shown. The same principle would apply to light and heat, it all being shown in one lump sum (T. 692). I did not reallocate any other items that have been broken down other than depreciation, insurance and taxes. None of these items have been broken down so as to determine the amount that is applicable to the loading and unloading docks. That would also be true as to portions of the Exchange Building. Insurance is a lump sum for the entire Exchange Building, and the same is true of taxes and depreciation (T. 693).

Redirect examination:

I could find nothing in the records to indicate that the labor employed in loading and unloading was employed exclusively for that purpose and not used for any other purpose.

[fols. 1075–1082] Recross-examination.

So far as I know such labor is not used exclusively for loading and unloading. The same man that loads and unloads also does other duties such as yarding and driving livestock.

Redirect examination:

So far as I know that is true in regard to the men who do repair work in the stockyards (T. 694).

JOHN J. BACHMANN, a witness formerly called by the Government and sworn, being recalled, testified in substance as follows:

Cross-examination:

[fol. 1083] Depreciation Reserve

In Government Exhibit No. 124 I made certain computations on the sinking fund method of setting up a depreciation reserve based on a 5 per cent return computed semi-annually. One method would be to buy a 5 per cent bond

believed to be sufficiently secure. If $1,000 were invested in a 5 per cent bond, a personal property tax of $1.25 per hundred would be paid (T. 715). County personal property tax is $2.03 per hundred, which would make personal property tax, city and county, $3.28. The franchise tax would be 50 cents per thousand, which would make a total tax of $3.33. The State income tax is 2 per cent on gross income, but the taxes mentioned would be a deduction. On the assumption made, out of the $5.00 return on a $100 bond, $3.33 would be subtracted from the $5.00 before attempting to compute the income tax (T. 716). 2 per cent on the remainder would be 3 or 4 cents. The Federal in-[fol. 1084] come tax would be about 20 or 21 cents. The total tax would be $3.33, plus 3, plus 21, or $3.57, which would be deducted from the $5.00, leaving a net return to the owner of that bond of $1.43. On page 15 of Government Exhibit No. 124 I have made a computation upon the basis of an asset worth $100,000. My compound interest sinking fund method is secured upon a 5 per cent basis to produce $100,000 at the end of the supposed life of that asset (T. 718). If the assumption is made that the net return to the purchaser of the security would be $1.43 per hundred instead of 5 per cent, that calculation would fall about two-thirds short at the end of the life of that particular $100,000 asset shown in the illustration. However, this example on page 14 was given for a comparison of the straight line and sinking fund methods and is based on the assumption that in addition to the fair rate of return, all reasonable expenses will be allowed and have been provided for, the same as my calculation on the depreciation allowance recommendation is based on the assumption that all necessary carrying expenses will be provided for in the reasonable expenses. Under the mathematical calculation which is made, it would fall short between 60 and 70 per cent (T. 719).

On page 12 I have made a somewhat similar computation based upon straight line depreciation and on a 5 per cent semi-annual sinking fund basis, as applied to the actual assets of respondent. Making the same assumption as to investments in a 5 per cent bond and assuming that expenses have not been provided for, the shortage would be possibly the same amount, approximately 60 to 70 per cent short of producing the cost of reproduction new over

the assumed life of the property. Those expenses are provided for in the particular expenses that are incurred in [fol. 1085] carrying a fund of that kind. If it is carried as a separate proposition, taxes is about the only item that I could think of (T. 720). There are possibly a few minor carrying charges, overhead, and so on, that might be allocated to the administration of a fund of this kind. I contemplate in my calculation that those carrying charges will be provided for. I have not in my calculations made any elimination for personal property taxes. I have stated that the franchise tax and income tax are to be allowed for all expenses and income considered reasonable and fair for rate making purposes, which in my opinion includes the necessary carrying charges if a sinking fund basis were adopted. In other words, I do not contemplate that the carrying charges will be a charge against the fund but will be carried in the reasonable expenses of the company for rate making purposes. The taxes paid to the county and state, the income tax, and the franchise tax, have not been adjusted by eliminating anything (T. 721). I have attempted in studying the history of respondent to determine where the money went. Of course, it is not possible to trace the exact dollar to find where it has gone, but it is my opinion that moneys which have been provided by the allowance of depreciation are in the main invested in the plant of the company. Some of them, in my opinion, may have been paid out by way of liquidating or other dividends. If the reserve is invested in the real property of respondent, it would not be subject to a personal property tax of $1.25 per hundred (T. 722), nor to a county personal property tax of $2.03 per hundred. That would equally apply to the state income tax of 2 per cent, and to the Federal income tax (T. 723).

Redirect examination:

I was called upon to assume that there would be a city tax of $1.25 per hundred which went to make up the $3.57 [fol. 1086] of taxes assumed in the questions asked me. That would be a tax to the City of St. Joseph. The St. Joseph Stock Yards Company is not located in the City of St. Joseph, as its office is in the Exchange Building, which is not in the city. The only personal property tax that I could find paid to the City of St. Joseph is indicated on

page 363 of Government Exhibit No. 121-A. It is personal property tax on the Transit House and the harness shop (T. 725). In my calculations for depreciation reserve on the sinking fund basis, I assumed that the payment of all reasonable expenses of the company are provided for elsewhere and based on my knowledge that it will cost, under ordinary circumstances, a sum of money to carry these investments by way of taxes. It is not necessary that those expenses be allowed in the sinking fund itself or be a charge against the sinking fund itself. They may be allowed in the reasonable expenses of the company. There is no argument, as far as I am concerned, that it does take money to carry those things, and I contemplate that that should be allowed, if this method of depreciation is adopted. That means that in ascertaining the reasonable cost of rendering the service as a basis for rates, taxes would be included in that reasonable cost. In addition to taxes and other things, there would be my recommendation for the sinking fund allowance (T. 726).

Recross-examination:

In the expenses set forth on sheets 3 and 4 of Government Exhibit No. 124, I have not set up an item to cover the additional expenses on additional personal property to be purchased by respondent, amounting to $50,000 per year.

[fol. 1087] Redirect examination:

Allocation of Maintenance, Repairs, and Other Expenses

I know the basis of allocation of expenses customarily used in cost accounting for department stores (T. 727). Two methods are employed, the square foot area weighted for the most valuable locations in the store, and, in some cases, cubic foot contents. As to whether either of these methods might be applicable to the allocation of costs in respondent stockyards to functional operations such as loading and unloading, the square foot method might be applicable. I wouldn't say without giving it study, but the square foot area of the facilities used for loading and unloading as compared to the total facilities used for handling of livestock could be made the basis for redistribu-

tion of certain expenses such as the maintenance of the plant. The square foot area possibly weighted for the value of the structures could be made the basis for allocation of plant maintenance expense. That basis might not apply in the case of wages. Another basis would have to be determined for that and still other bases would have to be determined for the allocation of other overhead expenses (T. 728). The allocation of maintenance costs on the basis of square foot area could be done from the information placed in the record by Mr. Christensen. I know of no method by which, from facts already in the record, labor costs could be distributed. As to general overheads, insurance, this would be distributed on the basis of s[illegible]nd value; traffic department expenses, on the basis of revenue produced by species and by mode of arrival, or the number of head by species [illegible]e of arrival, that is, off-hand, what bases might be used. I have given it no study and those are off-hand opinions and are the only ones where [fol. 1088] off-hand a basis comes to my mind readily. Gross income could be used, value could be used, area could be used. Those are sometimes classed as arbitrary bases. Obtaining the particular facts to make a distribution of labor costs might or might not require a long study and investigation, depending on how exact such allocation would have to be. It would be quite a lengthy job for me to make a study and investigation to enable me to distribute all the costs among the various functional activities in the respondent stockyards in a manner satisfactory to myself. It would require months (T. 730). Distributing all costs as between loading and unloading on the one hand and the other functional activities of the Stock Yards Company on the other would require an investigation because in allocating certain expenses a 100 per cent basis would have to be determined and the ratio of loading and unloading facilities to the total 100 per cent would have to be determined, which would be a very long job.

Depreciation Reserve

City personal property tax in the last year for which I had information amounted to $4.38 on the Transit House and $1.25 on the harness shop, less 2 per cent for cash. State and County taxes on personal property was $8.20 on

the Transit House and on personal property of the stockyards which covers, as far as I could determine, equipment, loan to Swift and Company, all other personal property which the company has, $279.82, which is the total amount of personal property tax this company has paid for a year (T. 731).

Recross-examination:

Allocation of Maintenance, Repairs, and Other Expenses

Distribution of loading and unloading expenses upon the basis of gross income would not necessarily produce a cor- [fol. 1089] rect amount. As a general proposition, that is a purely arbitrary method. If you take the gross income from a business for the different activities and distribute expenses upon that same basis and the company is making a profit from all its activities, you will have the result of having a profit from each separate activity, whereas it may be that 99 per cent of the profit is earned from some one activity, and some other activity is actually losing money. The gross income distribution method does not give a correct result except when the cost of operating a function or department is in the same relationship with the gross income, and the mark up on the commodity sold or on the commodity offered for sale is in the same percentage (T. 732). Referring to department stores, one department might be losing money and another making money, and yet the gross income adjustment would indicate they were all making money if the entire business were profitable. As far as income is concerned, the same criticism would be true of the method of distribution of income on the basis of value. As far as expense allocation is concerned, I do not believe it would be true in the same degree that the gross sales method would be. One might have in the same property two units each with a value of $50,000, and one might be losing money and the other making a handsome profit. That might be true in a particular case, but I do not think it is true as a general proposition. If that method of allocating expenses is applied to the property of respondent, the Transit House would be making a profit (T. 733). I know it is not actually making a profit. The same erroneous results are apt to follow from distribution merely upon an area basis. If a client were to employ me

to determine the expenses involved in a particular operation of a plant having numerous contemporaneous operations, I would not adopt either of these three methods. For [fols. 1090-1150] certain particular expense items I might feel inclined to use certain of those bases, for instance, I am inclined to think I would use the gross income basis for distribution of expenses of the type of traffic department expenses. Cost accountants will not take a basis for distribution of expenses and apply it to all of the expenses, regardless of the nature of them. They may use a few bases, and they may use as high as 50 or 100. I have in mind a particular cost job where I used over 50 bases of distribution, and that is the situation where an individual wishes to make a cost study that will be within a reasonable degree of the actual facts (T. 734). If I wanted to find the profit made on feed on the one hand and yardage on the other, I would not attempt to do it on the basis of gross income from each. As to repairs, I am inclined to think I would use value or area. I believe I would take area and, of course, weight it for value of the structures that are on it, giving particular regard to the nature of the structures in weighting (T. 735). I have not done this in my audit. I have not attempted to allocate the repairs to each type of property except to the extent that I did segregate the expenses of the Transit House so far as I was able to do so (T. 736).

[fol. 1151] Mr. John A. Zelinski, a witness called by the Government, after being duly sworn, testified as follows:

Direct examination:

Land Values

I recently made an appraisal of the value of the lands of the St. Joseph Stock Yards Company in Buchanan County and the City of St. Joseph, Missouri.

Qualifications

I am a graduate civil engineer from the Ohio State University, having received my degree of civil engineer in the year of 1914. My experience in engineering work began

prior to my graduation from the University, when for a time I was connected with the county engineer of Lake County, Ohio, at Painesville, Ohio, and for a while as assistant city engineer under the same gentleman at that city. Subsequent to my graduation I returned to Lake County, Ohio, and worked in the same general line of work, and also as a private practitioner in engineering, became city engineer in the City of Painesville in 1916. During this time I engaged in considerable land surveying and work of that nature in preparation of special assessments and valuations for the county and for the city. My work in land appraisal in the actual (T. 990 and 991) science itself began early in 1917 when I went to work for the Interstate Commerce Commission as a Junior Land Appraiser and continued, with some interruptions, from January, 1917, until the latter part of 1927. While with the Interstate Commerce Commission, I occupied all of the positions in the appraisal work from Junior Land Appraiser to Assistant Supervisor of Land Appraisers. For the last three years of my connection with the Interstate Commerce Commis- [fol. 1152] sion, I was in that executive capacity. The intervals of time when I left the service of the Commission were while I was in the United States Army from September, 1917, until June, 1919. And again I left the service of the Commission for a period of about 10 months in 1920, when I was Construction Engineer for the Diamond Alkali Company, and its affiliated railroad, the Fairport, Painesville and Eastern, and the early part of 1928 I left the service of the Interstate Commerce Commission to become Assistant Director of Research for the National Association of Owners of Railroad and Public Utility Securities, and was with that organization until October, 1929, when I opened my own office to practice as a consultant on railroad and utility regulation at Washington, and have been so engaged since. During the course of my work with the Interstate Commerce Commission, I have appraised lands, both in a subordinate capacity and as an individual responsible appraiser, and passed upon the appraisal or the work of other appraisers, in most of the big cities in the United States, particularly east of the Mississippi River, and, since practicing as a consultant, I have looked after the valuation of land work for railroads like the Pere Marquette, the (T. 992) Virginian Railway, Western Maryland Railway, Lake

Superior and Ishpeming Railroad, the Canton Railroad of Baltimore, the Louisiana and Northwest Railroad, the Unity Railways of Pittsburgh, the Aliquippa Southern. There may be some other minor properties that I cannot now recall. In addition, I would like to state I made the appraisal of the Omaha Stockyards for the Secretary of Agriculture and the Sioux City Stockyards at Sioux City, Iowa, as well as the properties here at St. Joe, Missouri.

The specific purpose of the valuation was for all uses contemplated by the Interstate Commerce Act, among which, of course, are for rate making purposes and for [fol. 1153] recapture of excess income, and also for the use in connection with the issuance of securities, and matters of that kind. (T. 993).

With my assistants I made some of the land appraisals of the Interstate Commerce Commission. I made them in many cities, particularly east of the Mississippi River. So long as I was with the Interstate Commerce Commission I was not assisted by anyone outside of the Commission. The assistants were usually other employees, assisting in two ways. Some were employed almost solely in the capacity of getting information and others were employed in more responsible capacity where they were responsible for portions of the appraisal itself (T. 994). These appraisals were solely the work of employees of the Commission, including myself. I gathered information from various sources in making these appraisals.

Some of the larger appraisal jobs on which I worked were as follows: The bulk of the appraisals incident to making the valuation of the Pennsylvania Railroad on lines east, including such terminal cities as Cleveland, Detroit, Pittsburgh, Philadelphia, New York and Washington; in connection with the appraisals of the New York Central properties at New York, Buffalo, and Cleveland and similar cities. In these appraisals I appraised land in both cities and country districts, the entire railroad lands (T. 995). After establishing my private office, in many instances I made appraisals of land of railroads. In many instances I have been retained in a consulting capacity where the appraisal itself has been performed by other men and I was asked to review their work, check it up and strengthen it, where it appeared to be necessary to revise either the supporting data or the conclusions in the light of checks which

were made by me. Practically all appraisals which I made since opening my office were for use in connection with [fol. 1154] valuations incident to recapture proceedings whereby the Interstate Commerce Commission was seeking to determine the extent to which railroads are subject to recapture of income in excess of six per cent of their value. In the instances where I acted as a consultant, the object of the appraisals was the same. I am still engaged in that work, representing railroads (T. 996). I am not now working exclusively for the Secretary of Agriculture. In recapture cases the Commission finds a value of the railroad property and according to the views of the Commission that finding of value proceeds along lines usually employed in finding value for rate making purposes. The Commission thinks that it is finding its value in accordance with the law of the land for the purposes of rate making. To some extent there is a difference of opinion on that subject. My personal procedure is the same in appraising land for recapture proceedings and in appraising land for rate making purposes.

The appraisals of the Omaha and Sioux City stockyard lands were made before the appraisal of the stockyard land at St. Joseph (T. 997).

Appraisal of Land of Respondent

Upon being definitely retained for the work of appraising the land of respondent, I proceeded to analyze all of the sources of information at Washington which I thought might have a bearing on the valuation of the lands to be appraised. Now, in particular I was aware of the fact that there had been valuations made of the different railroad lands in the vicinity of St. Joseph, and particularly in the vicinity of the stockyards location, and I analyzed the records in the valuation proceedings before the Interstate Commerce Commission to determine what, if anything, in the way of information had been adduced in connection [fol. 1155] with those proceedings that might be helpful. In that connection I paid particular attention to the valuation proceedings and the recapture proceedings incident to the findings by the Commission on the St. Joseph Belt Railway, which is most intimately connected with the lands of the St. Joseph Stock Yards Company, and I also went to

the files of the Interstate Commerce Commission to abstract such supporting data as had been used by the Interstate Commerce Commission, or had been quoted in support of the valuations by the railroads upon whom the investigation and proceeding had been brought. Subsequently I came (T. 998) to St. Joseph and proceeded to supplement that information by a record search at the court house, the Buchanan County Court House, and inspection on the ground in the light of all of the information which I had secured. In that connection, I took up with Mr. Topping and Mr. Strack the question as to whether the sales data which had been used in the St. Joseph Belt Railway hearing, and upon which there had been an agreement as to facts but not as to the applicability of the sales data, whether it would be possible to use that data without any further checks as to the detail facts and was satisfied that I had an understanding that that would be an agreeable procedure, and, to that extent, the sales search, of course, was shortened. From there on, the appraisers for the Stock Yards Company, Messrs. Spratt and Quinn had been furnished with additional records of transfers by the Stock Yards Company, and I, myself, have made a search at the court house during the time when this data was being gathered for these gentlemen, who were then collaborating in the setting-up of these sales data, and interviewing the parties to the transfers to the extent that we were able to find them joinly, in order to ascertain the facts as to the transactions, and those are reported in the sales sheets [fol. 1156] which are submitted in connection with my appraisal (T. 999).

Mr. Topping is the General Manager and President of respondent, and Mr. Strack is its counsel. Mr. Spratt and Mr. Quinn have been retained by respondent to make an appraisal of its land. They all agreed that the data respecting sales as it was used in the St. Joseph Belt Railway hearing could be used without further check as to facts. No attempt was made to determine the extent to which we would consider the data applicable and no agreement in that respect was made. That this data was applicable in part was understood as we went along, but the extent or weight was not agreed on and no attempt was made to agree to the extent of applicability or weight which might be given to an individual transfer. Transfers of property

within the corporate limits of St. Joseph are recorded in the Buchanan County Court House (T. 1000).

Now, after I collected this sales information, I also made a study of the use of the property on the ground, the accessibility of it from the standpoint of roads and streets and railroad accessibility, the character and kind of railroad facilities and switching services which were available to the site, all the lands in question, and I gathered such statistical information as I felt might have a bearing on the general value situation in the territory, such as the volume and value of the stock which moves through the yards, and the volume and value of the manufactured products which are produced in the vicinity of the lands, and the general business statistics as to bank clearings and debits for the city as a whole, and for the stockyards bank, such information as was made available to me by the officials of the Stock Yards Company and of the bank, and made a study of the topography and interviewed the engineers at the City En- [fol. 1157] gineer's Office and the Highway Department as to the nature and kind of improvements that serve the city and the general territory, interviewed the Army Engineer's Office in Kansas City as to the nature and kind of improvements that were proposed for the river, what was being done in the way of protection and abutment work, what the records of the engineering department showed as to the condition of the river in so far as high and low water is concerned, as far as that might have a bearing on the values of the lands in the general territory, under the specific zones of value in which I subdivided the property for the purposes of the appraisal.

After I proceeded to some extent in the study of value and it became apparent that I would subdivide the areas into zones of value, I had some little further discussion with Messrs. Strack, Topping, Spratt and Quinn as to the possibility of so delineating the zones that we would during the course of this proceeding all be talking about substantially the same areas, and it was suggested that, in so far as it will be possible to follow it, that we use the same zoning as the Secretary of Agriculture has used in a prior finding on this same property, and, before I left the city, I advised these gentlemen that I would follow the zoning of the Secretary of Agriculture, whereupon maps were prepared with the areas computed for those zones by Mr. Black

and Mr. Henrici jointly. Copies of those maps were furnished to myself and I understand to the stockyards appraisers, so that the zones of value I would expect we will probably be talking about will have the same limits, in so far as the areas are involved for each of the particular zones.

In my investigation, I personally viewed and studied each and every zone as shown on the map about which I spoke. I went over all of these zones in my study. In my present work in representing railroads in rate and recapture pro- [fol. 1158] ceedings, I have made land appraisals in cities scattered about the United States. I proceeded in making the land appraisal of respondent's lands in the same way I made the appraisals for my railroad clients. (T. 1003).

Government Exhibit No. 128 is the report of the appraisal which I submitted to the Secretary of Agriculture and includes the summary of the appraisal by zones of value indicating the area for each zone, the unit value found by me for that zone, and the zone value. In addition, it contains in the text commencing on page 2 of the report a description of the method of the appraisal, general description of the lands under appraisal, the railroad facilities, description of the highway facilities, description of the topography and lay of the land, some comment on building and zoning restrictions in the vicinity of St. Joseph and in the vicinity of the yards, comments on the assessments for taxation, comments on the sales data, and comments on the business depression and land values, and it includes graphic illustrations of the receipts of the different classes of livestock, and a graph of the local slaughter. It includes a graph of the value and tonnage related on a percentage basis of Armour and Company's business at South St. Joseph and a graph showing the total debits of St. Joseph banks and the stockyards bank.

The debits of the St. Joseph banks include all the banks in the St. Joseph Clearing House, whereas, the debits for the stockyards bank are the debits for the bank which does business right in the Exchange Building in South St. Joseph. That is on page 18. Debits are the total transactions which clear through the banks.

Now, following the text covering the general description in the report, I have a detailed description of each of the zones and comment incident to each of these zones of value.

[fol. 1159]. These commence on page 21 of the report for Zone A and continue for 20 pages, the last zone being Zone No. 3 on page 40 of the report. Page 41 is a topographic map of the general South St. Joseph territory made by the United States Geological Survey.

The purpose of including that in the compilation is to give the general topographic features of the territory within which the Stock Yards Company property lies. Now, I have also attached as a separate map in the report, a larger scale topographic map of the property in the immediate vicinity of the stockyard. That is an unnumbered map, but is to be found under a heading entitled "Chart No. 91, Missouri River Mouth to St. Joseph, Missouri in 92 charts and Index Sheet," and the title of the map is self-explanatory and it shows on a larger scale the territory involved under the appraisal and for the areas of stockyard lands, the contours are made on a 2-foot interval, and for lands which are relatively as flat as those in the stockyards area, this map is, of course, of much more detail and a great deal easier to read.

Well, I wouldn't say that I ran any levels. I asked Mr. Black to identify the differences in elevation, if there were any, and he made some measurements at the respective water tanks, the result of which was that we found out that the lands of the two water tanks were within one inch of the same elevation. And I carry a hand level with me on most of my work, an engineer's hand level, and, from time to time, where some marked topographic feature looks to me like it might be worth looking into, I just take it out and look over the lay of the land. I found that just trying to rely on your own idea of differences in elevation is sometimes misleading, and, if you have a small engineer's hand level, it does not take up very much room, and you [fol. 1160] can take it out and easily identify differences in elevation where the land appears to be pretty flat, and I used that, from time to time.

One water tank is near the corn sacking elevator, and the other one was the big, concrete water tank opposite Swift and Company's plant, near the material yard, the water tank at the material yard.

Mr. Black is the engineering superintendent at the yards. He told me that there was just about an inch between the water tank near the corn sacking elevator and the large

concrete reservoir (T. 1008). I don't recall which was higher or lower. In so far as I am able to determine this Chart No. 91, which is supplemental map No. 4, Government Exhibit No. 128, is a correct portrayal of the topography of the stockyard land.

Following the small scale topographic map, I have on page 42 of the report certain of the collateral information that I gathered which I felt might be of some significance in connection with the appraisal, and I list, among other things, special ordinance No. 4324, and a contract lease on page 43 between the city of St. Joseph and the St. Joseph Stock Yards Company, and special ordinance No. 4185 on page 47, and immediately following these is a digest of the sales data which were investigated by me in connection with the preparation of the appraisal.

Special ordinance No. 4324 is an ordinance vacating part of Indiana Street in South St. Joseph Town Company's second addition to the city of St. Joseph. Now, the purpose of listing these vacating ordinances is to show collaterally that that particular street area has been closed to public use, and to the extent that access by streets has a bearing on the value, I felt that an ordinance of this type might well be listed along with other information which I [fol. 1161] had gathered that I thought had some bearing on the appraisal.

Indiana Street ran through a portion of the lands of respondent and is now included in the lands of respondent. The lease between the St. Joseph Stock Yards Company and the city of St. Joseph discloses the existence of certain easements for drainage purposes which were granted by the Stock Yards Company to the city of St. Joseph across the property of respondent. The special significance of special ordinance No. 4185 on page 47 is that it is also the vacation of portions of streets and alleys (T. 1010).

Transfers, in General

Beginning on page 48 and running to page 173 are sales sheets which are the digests of transfers of property which took place within the general vicinity of the stockyards lands and are data which I had before me at the time I was arriving at my conclusions as to the values of the individual zones. These are the sales to which I testified I agreed with certain representatives of respondent that

the facts were as stated in the record on these sales. The outlines of the property involved in each individual transfer are shown in red ink on supplemental map No. 3 to Government Exhibit No. 128 and each area bears the same number which is given to that transfer on the sale sheet. These outlined areas on the map can be identified with the sale sheet by the use of these numbers. Some areas outlined on the map include two separate numbers which indicate that duplicate transfers were picked up or it may be that they had (T. 1011) a resale of the same area and both numbers are shown in the outlines of the area. By reference back to the sales sheets it can be determined in which instances these numbers represent duplicates and in which [fol. 1162] they represent resales. These transactions on the sale sheet include other forms of transfer than sales in which the fee simple title passed from one person to another. Occasionally there are some leases. There may be a few mortgages, deeds of trust or other form of transfer given as security for debt. It was endeavored, of course, to restrict the information purely to actual transfers of property and leases of property which might be indicative of value of the particular property that was covered by the outline. They only include foreclosure and other forced sales where it was not possible to determine in advance of the transaction that the transaction turned out to be a foreclosure. One or two of these transfers listed here upon investigation developed to be either foreclosures or transfers for convenience to avoid foreclosure (T. 1012). There may be one or two that were transfers of convenience which were not to avoid foreclosure.

After I listed these transfers I investigated them outside of the record. The ground was visited jointly by Messrs. Spratt, Quinn and me. We interviewed the parties to the transfer wherever they were available, or at least one of the parties, to verify the bona fides of the transfer to the extent that it was possible to do so. This was all done in conjunction with representatives of respondent. However I made certain supplemental investigations incident to individual transfers which are listed and which it was not possible for me to do jointly with representatives of respondent. An example of this was information I was able to obtain at Washington about certain transfers.

I gave some consideration to each and every one of the transfers listed in Government Exhibit No. 128, but did not give them all the same weight (T. 1013). To some of them I gave no weight, but to others partial weight or some [fol. 1163] weight towards the forming of a conclusion as to an individual situation (T. 1014). Sales in the residential sub-divisions east of the railroad tracks, particularly of the residential properties, were not given very much weight by me in the conclusions I reached as to value on the main body of the lands of the respondent, that is to say, on the lands in Zones A, B and C. I did give some consideration to the sales of these residential properties as a possible indicator of value of some of the outlying areas which might be sub-divided and sold for a similar utility. In so far as the sales of industrial properties themselves were concerned, such as, for example, sales 6, 5, 3, 4, and 11, sales of that type, I gave those consideration in making up my mind as to a level of industrial values in this general vicinity, that is to say, values of lands for general industrial purposes. Now, transfers like 19, 20 and 21, which are leases of areas of a semi-retail nature, incident to a wholesale use in part, I, of course, gave consideration and some weight as to the sales as being applicable to a small portion perhaps of the areas of the respondent's lands, but as not being indicative of large industrial holdings held in what might be called assembled areas, such as Zones A, B and C, for example, so that I would say in general that I could not state specifically the exact amount of weight that would be given to any individual sale in reaching a conclusion as to value of the zone. Nevertheless, the sales were considered by myself particularly in getting a background as to what the general level of value would be in this vicinity. Other than Zones 1, 2 and 3 none of respondent's land is within the corporate limits of the city of St. Joseph. Some of the sales of residential property were within the corporate limits of St. Joseph, and some were outside. Kirschner's Addition at the lower left-hand corner of supplemental map No. 3 is [fol. 1164] an example of a residential addition outside of the city limits. In discussions of the individual zones I have referred specifically to certain of the sales that might have more or less bearing in forming a conclusion as to values of individual zones and that will appear in the body of the report in the discussion of the individual zones. I

did not give weight to a sale found to be the result of a foreclosure or other forced sale in determining my values (T. 1016), nor to a transfer of convenience to forestall a foreclosure or a forced sale. There were a few transfers where the parties were not dealing at arms length, that is the grantor and grantee were in practical effect the same. I gave very little weight to this except in so far as it may have appeared that the transfer had been arranged on some sort of a basis that might be some indication of value (T. 1017).

Sale No. 55

In the course of examining the audits which were being prepared by the Government accountants I was not satisfied as to the bona fides of sale No. 55, and made further investigation at Washington, and was satisfied that it could not be used as a measure of value. That was a transfer of title of the land used by the St. Joseph Belt Railway Company as a right-of-way for its tracks and other facilities which is shown on Supplemental map No. 3 in orange coloring surrounding certain zones of respondent's land. Prior to the transfer, the title to that land was in the St. Joseph Stock Yards Company, the St. Joseph Belt Railway Company holding it under a lease (T. 1018). At the time of the lease the St. Joseph Stock Yards Company owned the capital stock of the St. Joseph Belt Railway Company. I could not state definitely, but it would appear that the St. [fol. 1165] Joseph Stock Yards Company still owned the capital stock of the St. Joseph Belt Railway Company at the time of the transfer of the real estate on December 11, 1929 (T. 1019). Certain officers were in common in both companies. That is, certain officers of the Stock Yards Company were also responsible officers of the Belt Railway Company. The record consideration was $100. There were certain other considerations providing for mutual arrangements whereby certain streets and roadways would be left open, certain easements which provide for common arrangements for handling certain facilities would be maintained, and, in addition, there was shortly thereafter an agreement which is shown on page 110 of the report entered into between the Stock Yards Company and the St. Joseph Belt Railway Company which apparently was under consideration at the time of the transfer of the land. All

of these items, I think, have a bearing on the normalcy, so to speak, of the transaction (T. 1020).

I investigated the audit of respondent's books by Mr. Bachmann and his assistants to determine what consideration respondent's books carried as having been paid to it for the transfer of that land. I found that ostensibly the total area of 82.356 acres was transferred for the consideration of $1,020,499.05. There were two separate areas, one at the rate of $2,000 an acre, and the other at the rate of a little in excess of $14,000 per acre. The two areas were not broken down on the map, but they are shown on the sale sheet. I was not able to secure from the records of the Stock Yards Company any exact delimitation between the two areas which went to make up the grand total (T. 1021). I do not feel that it would have helped me if I had been given a breakdown of the location of those two tracts for the reason that I was satisfied that the bulk of the outlying area was down in the vicinity of the so-called car [fol. 1166] cleaning tracks, and that, for that reason, the $2,000 per acre rate for that class of land, as in comparison with the general average for the Belt area proper, did not look out of line and I had just that sort of thing in mind when I was considering the sale. The fact of the matter is that some discussion which I had down at the company's office led me to believe that that was where the change in area was involved (T. 1022). The car-cleaning area is south of the round-house area.

Sale No. 53-A

Sale 53-A shown on page 101 of Government Exhibit No. 128 was a transfer from Swift and Company to Henry Veeder for the St. Joseph Stock Yards Company. I made some inquiries about that transfer and satisfied myself that it probably was not an indicator of real value and did not give it very much weight. However, I found in the course of my investigations certain information which appears in back of the transfer on pages 102, 103, 104, 105 and 106, which I thought had some pertinency at the time of the respective instruments. I was also advised subsequent to the filing of my report by Mr. Phalp of Swift and Company that the general conclusions that I had about the transfer were about right, namely, that it was not an indicator of value. I did not so consider it (T. 1023). Mr. Phalp referred me to some

testimony about that transfer before the Interstate Commerce Commission which I have read and with which I am familiar. It was the Recapture case of the St. Joseph Belt, Finance Docket No. 3906. On page 101 under sales analysis is the sum of $23,200, which was the supposed consideration for this transfer, which is $2,000 per acre. That tract is shown on the land map, supplement map 2, as Zone D (T. 1024). There has been transferred from this tract to the [fol. 1167] St. Joseph Belt Railway Company a small strip through the center reducing the area from 11.6 acres to 11.436 acres. The reason I placed a unit value on that zone of $4,000, notwithstanding the purported transfer at a price of approximately $2,000 per acre was in part due to the things about which I have just testified. Referring to pages 102 to 107 of Government Exhibit No. 128, in connection with transfer No. 53-A I found this copy of the minutes of the Board of Directors of Swift and Company, which had to do with transfer of this land, and, before I had gotten my verification from Mr. Phalp, I thought that that information ought to go along with the transfer, so I attached it to the report because it would seem to indicate that according to those minutes of the Board of Directors, the sale was a fair sale. However, this testimony in the docket indicated that it was really a transfer of convenience and was not indicative of value, and, as I stated, regardless of these minutes on the transfer of this property, it looked to me that it could not have been at its full value, so I placed a higher value than that on the zone. It is just my opinion that the zone is worth more money. On pages 105 and 106 appears a release from the First Trust and Savings Bank as trustee. This piece of property was covered by a general mortgage and the mortgage had a provision whereby, before the sale of any property covered by it could be transferred, it would have to be released from under the cover of it, and the copies of instruments on pages 105, 106 and 107 show that clearing to the title. Notwithstanding the lease contained the following statement: "for and in consideration of the sum of Twenty-three Thousand Two Hundred Dollars ($23,200.00), the selling price of the premises hereinafter described and a certified copy of a resolution passed by the Board of Directors of Swift and Company, a [fol. 1168] corporation organized and existing under the laws of the State of Illinois, with principal office at Union

Stock Yards, Chicago, Illinois, stating that in the judgment of said Board of Directors the said premises are no longer required or useful for the business of said Swift and Company, and stating the selling price thereof, and a sworn certificate by the Secretary of said Swift and Company, stating that the amount for which the said premises have been sold is a fair price therefor,'' from further investigation I was not satisfied that the value stated in the release was a fair value, and consequently put a higher value on the property (T. 1026).

Zone A

A discussion of Zone A begins on page 21 of Government Exhibit No. 128. That is the zone upon which are located the major facilities of respondent, such as the Exchange Building, the loading and unloading docks, the cattle, hog and sheep divisions for the receipt and holding of livestock for immediate sale, and related facilities. I would not say that each and every portion of that zone is equally valuable. Five thousand dollars per acre is an average value for the zone. I attempted to place an average value for the entire 71.941 acres in the zone. If I cut out individual portions of that zone I might have a materially higher unit, and certain other portions might have materially lower units than five thousand dollars. In arriving at the value of $5,000 per acre I considered the land as being stripped of the super-structures now thereon (T. 1028). I considered it was stripped of such sub-structures as appeared in the engineer's inventory, but certain of the sub-structures, such as those belonging to the public utilities of water and gas and electricity, and items of that kind, were available, and [fol. 1169] I considered, of course, such items as paving, which were inventoried by the engineers as being stripped off of the land, since the area upon which the paving, such as that on Packers Avenue and Illinois Avenue extended, was included in the engineer's inventory (T. 1029). I considered the land as stripped of all structures, both super and sub, which are owned by respondent and included in the inventory and appraisal made by the Chief Valuation Engineer for the Government. I considered the other super and sub-structures thereon which were not owned by respondent as either remaining in place or available since the

stripping of certain of the sub-structure improvements which respondent owns might involve a change in location of certain of the utility facilities, but I did consider that the utility facilities were available to the land (T. 1029). I considered the land at its present grade. I considered it as having all of its surrounding environments and facilities, such as railroads, packing plants, availability of electricity and water, gas, proximity of the retail district of South St. Joseph, and all of the surrounding conditions as existing just as they do today. I considered Zone A as an assembled industrial tract. In the last analysis I did give some thought to the possibility of portions of the tract being used for a retail or semi-retail development, and to some extent that portions of it might be usable as a commercial or wholesaling area, but the zone generally was considered by me as an assembled industrial tract, ready for use for any industrial purpose by an industry which could use that sized area, or a group of industries which together might use that size of an area. I also considered that under the circumstances of the relationship of the surrounding development, that the property was very highly adapted to a stockyards use, but I did not consider that the use would [fol. 1170] necessarily be made in identically the same way that it is at the present time. In other words I did not consider the value of this land based upon the present use of it, but did consider the availability of the land and site for a similar use, or for a general industrial use (T. 1030-1931).

I think stockyard use is probably the highest and best use to which Zone A could be put. I considered its adaptability for that use and its availability. Some of the zones other than Zone A have structures on them, some are entirely vacant, some partly vacant, and some partly covered with structures. In my appraisal of the other zones I followed the same general principles described in arriving at my valuation of Zone A in so far as those principles were adaptable to the other zones. Some of the other zones, in my opinion, are both available and adaptable for stockyard use (T. 1032). I covered that in the description of the individual zones. With the packing plants located just as they are and other things just as they are it is my opinion that certain zones have an adaptability and availability for stockyard use. To a certain extent certain of the other areas suffer dis-

abilities in comparison with Zone A, for that particular kind of use, but to the extent that those disabilities can be overcome I think it will be possible to make such use of them. These zones are less valuable. Zone A carries the highest unit of value of the so-called industrial areas outside of the city. There is one zone in the city limits of St. Joseph where I placed a higher unit value than on Zone A, the Illinois Avenue frontage, of course, derives its value from an entirely different approach to the problem than Zone A. The existence of these lesser valued zones which are available and adaptable for stockyard use has a bearing upon the value of Zone A (T. 1033). The existence of large areas of land which, even with some difficulty which might [fol. 1171] be overcome, can be made available for a similar use, naturally acts as a depressant upon values of the lands that are actually so used. That is to say, that where an alternate area is susceptible of a like development, even though at greater expense under the present circumstances, it has a tendency to hold down a scale of values which another piece of property might derive from having a monopoly of those elements that would make it the only site available (T. 1034).

Zone 1

The Illinois Avenue frontage is in Zone 1. It is occupied in part by a brick hotel building known as the Transit House, in part by a driveway leading into the sheep feeding division, and in part by a vacant store structure adjoining the Journal building (T. 1034). In arriving at my valuation of that tract I gave consideration to its availability for the uses similar to the ones to which it is now being put. I also considered that its location was in the secondary retail district which generally fronts that street, and that it had an alternate use for any of the retail utilities found in that street. The highest and best use, economically, that zone could be put to would be retail store use in keeping with the neighborhood. I gave that weight. It is on that basis that I arrived at my valuation of 50 cents per square foot (T. 1035). I was aware of the very small gross rental received from the Transit House and also examined the audit to see the rentals which were derived from the use of that site. Those rentals were being re-

ceived at the time I made my investigation for my appraisal. If I had based my appraisal on the actual particular use which is now being made of that property rather than its highest potential use my value would be materially [fols. 1172 & 1173] lower because the use to which the property is put is apparently not an economical use.

Summary of Appraisal

It is my opinion that the land of respondent stripped of its improvements could not be marketed under present conditions to bring in $968,732, which is the total value of the land appraised by me (T. 1036). Some of the smaller zones where small sums of money are involved might be marketed separately at the prices I have placed on them, but in general it is my opinion that even the individual zones would not be marketed under present conditions to produce the prices at which I have appraised the property. Neither Zone A nor Zone B could be so marketed. Zone 1 might be. I doubt if Zones 2 or 3 could be. Zone C could not be so marketed (T. 1037). The conditions I have in mind which caused me to make these statements are that the real estate markets throughout the country and in St. Joseph in particular, are quite stagnant. Such investigation and study as I made of the situation while preparing my appraisal led me to believe the market was very slow, and the rate of transfer of this type of industrial property was so slow that it is my judgment that any endeavor to sell areas as large as these would result in the seller having to take lower prices. The values which I have placed on these separate zones do not in any instance represent stagnation values. I have endeavored to place a value on each zone that I thought represented what the property might be sold for under some recovery from the present depressed conditions and under situations that were a little bit more really normal as far as business was concerned, and as far as banking was concerned. By that I mean conditions to which I would look forward in the future (T. 1038).

[fol. 1174] Government Exhibit No. 128

The unit and total zone values shown on page 1 of Government Exhibit No. 128 represent my judgment and opin-

ion of the true value for rate making purposes of the zones so shown and valued (T. 1039). They are as follows:

Summary of Land Appraisal

St. Joseph Stockyards Company, South St. Joseph, Mo.

Zone	Area		Unit Value	Zone Value
	Acres	Sq. Ft.		
A	71.941	.....	$5,000	$359,705
B	17.601	.....	3,500	61,604
C	24.655	.....	4,000	98,620
D	11.436	.....	4,000	45,744
E	10.283	.....	3,000	30,849
F	45.951	.....	1,000	45,951
F1	.874	.....	.....	100
G	22.752	.....	1,000	22,752
H	10.313	.....	800	8,250
I	9.400	.....	800	7,520
J	24.873	.....	800	19,898
K	16.083	.....	700	11,258
L	18.316	.....	500	9,158
M	12.516	.....	350	4,381
N	56.412	.....	3,000	169,236
1	.....	23,697	0.50	11,849
2	.....	138,956	0.13	18,064
3	.....	625,609	0.07	43,793
Totals	371.502 Acres			$968,732

Cross-examination.

Qualifications

The first stockyards appraisal made by me for the Secretary of Agriculture was at Omaha in October, 1931. That was the first time I had ever been that far west (T. 1039). I had been in St. Louis and Minneapolis which are on the west bank of the Mississippi River but had not been farther west. In addition to myself, Mr. Graham and Mr. Slater appraised the property of the Omaha stockyards on behalf of the Secretary of Agriculture under a contract [fol. 1175] (T. 1040). I understand that two appraisers, Messrs. Sholes and Tukey, appraised the same property for the stockyards company. At the time I was making my investigation for the Omaha stockyards appraisal Mr. Slater accompanied me a substantial amount of time. I gathered some information in Omaha with Mr. Slater and some I had already gathered before I went to Omaha (T. 1043). I showed what I had already gathered to Mr. Slater. The two of us had the benefit of each other's personal knowledge as to facts. That was roughly over a period of about

a month while I was in Omaha. On occasion Mr. Slater and I discussed the data we had developed together. To a varying extent we discussed the applicability of that data to the question at hand, to wit, the valuation of the land of the Omaha stockyards. As far as I know Mr. Slater had all the data I had. Mr. Slater and I did not use quite the same zones. The zones were originally laid out together and Mr. Slater made some minor departures such as having more than one unit price for one zone (T. 1044). He made some sub-zoning. We did not arrive at our unit prices together. I went back to Washington and arrived at my unit prices and Mr. Slater stayed in Omaha and arrived at his (T. 1045). $1,741,416 sounds substantially like the correct figure of the total valuation, or of my total valuation of the land of the Omaha stockyards (T. 1046). The appraisal of Mr. Slater was produced at Omaha while I was on cross-examination. I looked at it during the course of my examination, being called upon to look at the total amount of Mr. Slater's valuation. The amount of $5,900,-631 is approximately the figure that I recall as being one of Mr. Slater's figures. I understood he had another one. The figure given is approximately the figure I saw in the appraisal and to which I was asked to refer several times [fol. 1176] on cross-examination. My recollection is that it was somewhere in excess of five million dollars and I do not know exactly what the figure was. I recollect that the Graham appraisal was in excess of seven millon dollars (T. 1048). I was not there when the stockyards appraisals were introduced but I have an idea they were around seven million dollars anyway. Mr. Slater was a real estate man in Omaha and hired by the Government the same as me. I understand Mr. Graham was hired by the Government and was a real estate man in the City of Oamha (T. 1049).

I have never been in the real estate business any place which would include St. Joseph. I bought and sold real estate on my own account in Washington and in Ohio to a small extent. In Washington it was a fairly good sized development. I took over a piece of property of about five and one-quarter acres in one of the best residential sections, developed it and am selling it off. I still have some of it. It is a residential tract. Promoting a subdivision is a highly specialized field (T. 1051). There is sometimes a distinction made between a subdivision of

real estate for residential and for industrial purposes. I have never been in the business of buying and selling real estate in the City of St. Joseph.

I studied civil engineering at Ohio State University and received the degree of Civil Engineer, which did not include the study of land appraisal. While a student at the University and while I was assisting the county and city engineer of Painesville, Ohio, my work did not require me to make any specific appraisal of real property but did require me to make set-ups of the valuations for assessment purposes (T. 1052). I worked with the assessors in the county and city offices and prepared the prorata assessments for different kinds of public improvements. By that I mean I did the clerical and engineering work in that connection but I familiarized myself with the value of the [fol. 1177] property because some assessments, being public improvements in that county, had to take into consideration the values of the property as well. I did not fix the values, someone else did that. My work was of the same character in the period directly after graduating from the University and until employed by the Interstate Commerce Commission. My services in the United States Army were not of such a nature as to require the appraisal of real property. My answer would not be quite the same as to the period I worked for the Diamond Alkali Company as construction engineer because I was concerned with the construction of certain projects where land had to be acquired (T. 1053) and was familiar with what the company was going to have to pay for the land, so that it could determine the extent upon which it could proceed upon a particular kind of improvement (T. 1054). I did not buy the land, someone else did. I, of course, learned what they paid for it.

With the exception of the three stockyard appraisals, practically all of my land appraisal experience was in connection with proceedings pending before the Interstate Commerce Commission. While with that Commission my appraisals were for three purposes. The first was for railroad valuation under Section 19-A of the Interstate Commerce Act. The second was under Section 15-A of the Interstate Commerce Act relating to the collection of excess income from railroads (T. 1055). The other was in connection with proceedings before the Commission wherein

railroads sought permission of the Commission to issue certain specific securities. When I testified on direct examination that the values I found were used for rate making purposes, I referred to the work generally under 19-A. To my knowledge the Interstate Commerce Commission [fol. 1178] has never based specific railroad rates upon the valuation of the railroads who are charging the specific rates. The valuations are used principally for the group determination of value in general rate proceedings, and they are introduced in those general rate proceedings. I would not say that I know the Commission based its rates specifically upon that group valuation but would say that in general (T. 1056) there is considerable feeling that the rate is not a fair return. I am not a judge of what a fair return is.

After leaving the employ of the Interstate Commerce Commission I do not think I have ever made an appraisal of railroad property for a railroad of which I had made the basic appraisal while an employee of the Commission. However, in my supervisory capacity I reviewed the appraisals of railroads throughout the country and since leaving the service of the Commission some of my clients have been railroads where valuations have been made upon the property in the time when I was in a supervisory capacity. While acting in a supervisory capacity for the Interstate Commerce Commission I did supervise appraisals for certain railroads and later was employed by those same railroads to again make appraisals. I do not recall any instance off-hand where I made a specific appraisal of a railroad while in the employ of the Commission and later acted in a supervisory or consulting capacity in connection with the same railroad, although I may have made appraisals of small parts of such railroads. I do not recall any particular property where I made the whole appraisal before and have since been working for that particular carrier (T. 1057). I do not know just now where I made an appraisal as an employee of the Commission of a portion of the land of a railroad and after the termination of my employment with the Commission was retained by the same railroad in any capacity. In connection with the appraisals which I supervised while [fol. 1179] employed by the Commission, after supervising these appraisals, I did not assume the responsibility for

the appraisal only as to its correct set-up by the appraiser. The appraiser who made it assumed the responsibility for it. By correct set-up I mean it was in proper form and properly supported, based upon data which the appraiser had adduced in connection with his search. I attempted to form an independent opinion of the value of the land being appraised and in each and every instance formed such an opinion (T. 1058). I then checked the results with the data which the other employee had in his report to satisfy myself that the conclusion reached by the other employee was reasonably sound. I would endeavor in the first instance through discussion with the appraiser to convince him of any error I thought the appraiser had made and very often upon review the appraiser produced the figure on which we were both in accord as more nearly representing the value of the particular property under appraisal. In certain instances, however, appraisals were referred to me for an independent conclusion and I recommended to the supervisor of land appraisals that changes be made and such changes were made. As a general proposition, in every instance the changes would be made as a direct result of my reviewing the data which the other employee had gathered although sometimes it arose out of the presentation of additional data by the particular carrier whose property was being appraised (T. 1059). From time to time it would arise through no additional data. When these appraisals were then forwarded to the supervisor of land appraisals sometimes my signature would appear as having supervised or approved the appraisals but more generally the recommendation was made orally to the supervisor. Sometimes the oral recommendations carry the same weight with the supervisor as if they [fol. 1180] had been in writing. The procedure there was that in cases of a great many of these recommendations they were prepared in connection with hearings that were in progress. The supervisor would prepare over his signature recommendations to the director for changes in the so-called land report. It was these changes which generally carried the recommendations that I had made or some other assistant supervisor had made over men who had been delegated specifically to review that particular problem. In many of such instances I myself dictated the recommendations for signature by the supervisor. That was

quite a general practice while I was there (T. 1060). In the instances where I supervised appraisals while working for the Commission and later was employed by the railroad involved, in some instances I later made an appraisal of the same land I had previously supervised. In these later instances sometimes I arrived at the same unit values as the unit value in the previous appraisal which I had supervised and in some instances not. In some instances the reappraisal was greater and in some instances lower. The bulk of the appraisals (T. 1061) over which I had supervision were under Section 19-A and were generally of earlier dates, while the bulk of my work as a private practitioner has been of so-called recapture cases. I was with the Commission a short time while recapture hearings were going on and during that period I was supervising some of them. I supervised appraisals during that period in connection with which I was later employed by the railroad involved. My answer about some being higher and some being lower in the second appraisal applies to those. I left the Interstate Commerce Commission in December, 1927. The first recapture hearings were held by the Commission in 1926. It may be that the St. Joseph Belt Railroad Company, which records I stated I read at Washington, had a hearing under Section 15-A in 1925. I do [fol. 1181] not recall the exact date (T. 1062). If that is true the recapture hearings began earlier than 1926. In all the appraisals made by me since leaving the Interstate Commerce Commission I used the same method for the determination of what before the Interstate Commerce Commission is known as the basic land values.

In addition, railroads generally claim what is known as excess cost of acquisition of carrier lands. The Interstate Commerce Commission has ceased making determinations of that cost. However, carriers, because they feel that the Supreme Court may some day rule more definitely on the inclusion of excess costs, in order to put in the complete cost, very often have me make up estimates of the excess cost of acquisition in addition to the so-called basic land value. I follow the same method in determining the basic land value. Excess cost of acquisition is an entirely separate and distinct item (T. 1063). I did not in this case claim that the basic land value was the sum of the two. I claimed that the value of the railroad land for railroad

purposes is the sum of the two. I felt the same way about it while an employee of the Interstate Commerce Commission but being an employee did not prepare any estimates of excess cost after the Act was amended because the Commission ceased making such findings. However, prior to the amendment of the Act I did prepare such estimates while in the employ of the Commission and I believe the Commission should go on finding them. I think I testified to the equivalent of that before the Commission where the testimony was elicited on examination. Usually with the first mention of excess cost of acquisition, objection would be raised by various attorneys to any testimony on the subject, and as a rule, particularly in 19-A cases, the Examiner sustained the objection and the question was never answered. There were one or two instances where I recall I was specifically asked if I set out to purchase [fol. 1182] the land of the railroad which was under appraisal whether I felt that the land could actually be purchased for the appraised price and I testified that it could not in my judgment (T. 1064). That is still my view. The position of the Commission at that time and after the amendment of the Act was that that was not a proper element to be taken into consideration in determining the land value of railroads and as an employee I had to conform to those views in making the findings. When I left the employ of the Commission I was no longer so restricted. The people for whom I performed the work would specifically ask me to make both findings. In my appraisal of respondent's real property I followed the same method used while an employee of the Interstate Commerce Commission as to basic value. I did not include any acquisition cost (T. 1065).

While an employee of the Interstate Commerce Commission the rules of procedure and methods for the appraisal of land were prescribed by the supervisor of land appraisals. I do not think these rules were in existence at the time I entered the employ of the Commission. Then the instructions were in a state of flux and suggestions were being received from appraisers who were engaged in the field work throughout the country as to the manner in which they might be improved. The work was in a formative state and instructions were revised from time to time and finally set up in completed form. I could not state off-

hand when these instructions were first put in a definite pamphlet form. I would not swear that they were not in a definite pamphlet form at the time I entered the employ of the Interstate Commerce Commission. I do not know. I would not swear that any substantial changes have been made in these instructions since the date I went in the employ of the Commission. I don't know (T. 1066). Natu- [fol. 1183] rally I do not know the date any such substantial changes were made. I did not have any part in any substantial change in the instructions. Any change in which I had a part would be a minor change. I do not recall any specific minor changes in which I had a part. I know I made suggestions from time to time when asked for them but I would not recall at this time what they were ~~or when~~ they were made (T. 1067).

While in the employ of the Commission, I testified in proceedings before the Commission, in some instances testifying in defense of valuations previously placed by me as a result of my own investigation and in some instances upon the field investigations of one or more parties other than myself. Before I had the formal title of assistant supervisor of land appraisals, I performed the duties of assistant supervisor of land appraisals for some time and was known as assistant to the supervisor of land appraisals in the organization. That was some time after I returned to the service of the Commission in 1920 (T. 1068). It was possibly around 1923 or 1924. I cannot recall whether I ever testified before the Commission in respect to a land appraisal, the field investigation of which had been made by some other employee or employees of the Commission, before the time I became acting first assistant to the supervisor of land appraisals. Maybe I have and maybe I have not. I couldn't state, I don't know. It would not have been a particularly unusual situation if I had, according to the practice. I was not first assistant supervisor, there was one other and he outranked me while I was there. There were two assistant supervisors, the other was A. B. Manly, the present supervisor (T. 1069). While I was acting assistant Mr. Manly was assistant. It is not an unusual practice for some of the appraisers of the land section of the Interstate Commerce Commission to testify from time to time before the Com-

[fol. 1184] mission about appraisals in which some other employee did the field investigation. I did that from time to time. In testifying I did not testify that the values fixed by the appraisal were my own individual values. They were the appraiser's value and I concurred in the finding (T. 1070). In each and every instance I presented a concurrence to the value fixed by the field investigator. I don't recall right now that I ever differed from the man who had made the field investigation. It is possible that I did sometimes. In such instances that I testified and another employee had performed the field investigation, I did not always visit the property being appraised. In most of the cases where I testified on a specific valuation, I generally made a point, if possible, to see the property. Now, I know that I didn't see all the property about which I testified at hearings but there were a large number of cases where I did. There were probably also a large number where I did not. Even in cases where I visited the property it probably was not always possible for me to visit each and every portion of it (T. 1071). In those instances where I testified, based upon field investigation of another employee, I based my independent and concurring opinion upon facts gathered in the field by the other employee and very often upon additional facts presented by the carrier. There probably were instances where it was solely upon facts gathered by this other employee. I don't know whether my opinion would have been the same or different had I done the field work myself. It might have been different and it might not, I couldn't say. There would be no way to tell. I think the best illustration of that is that on occasions when I did review the work of some other man and went out in the field we made changes in the original appraisal so that it might be, in some instances, if I had gone over the property myself and seen it and gathered some additional data, I might have [fol. 1185] reached a different conclusion. Some of those changes would be material (T. 1072). To some extent, following the method prescribed by the Interstate Commerce Commission, it depends somewhat upon who gathers the information. Of course the gathering of information in the service of the Interstate Commerce Commission sometimes is restricted by the time element, and the man who spent more time than another, or if a faster worker, might

be able to find more information, or a keener analyst might be able to find more information than one who is not. The human element enters into a thing of that kind and two men from the same organization working under the same instructions might bring in entirely different results. The human element necessarily enters into the analysis of the available information which must be made on the ground and also to the weight that is to be given to each item as viewed on the ground and reflecting local conditions.

In my stockyard appraisals I have not investigated all of the data. Sometimes data have been furnished to me or I have found it in other proceedings which had been presented in the course of a hearing and very often agreed to by the parties to the proceedings and in that instance I took that data and made a verification on the ground myself to satisfy myself as to its existence, location and applicability (T. 1073). Very often I got data in advance of my having seen the property. I personally made the field investigation in respect to these stockyards properties.

I think I have never testified as a land witness or appraiser in any court proceedings involving the value of land. I do not know of any cases before the Interstate Commerce Commission in which in the review of the Federal Court any reference was made to the specific question of land values. To my knowledge the methods and regu- [fol. 1186] lations prescribed by the supervisor of land appraisals of the Interstate Commerce Commission have never been specifically approved by any Federal Court (T. 1074).

Appraisal of Land of Respondent

The first time I ever came to St. Joseph was October 31, 1932, remaining there until the evening of November 14, 1932, about three and one-half weeks. Probably a week would come near to the time I spent in the court house examining records. I don't recall how many days I spent with Messrs. Spratt and Quinn investigating transfers (T. 1075). It was probably about four full working days. In investigating transfers I practically always went with Messrs. Spratt and Quinn. There might have been one or two instances where I interviewed a party separately but I couldn't recall off-hand. I went back to the site of some of these transfers and if the party was there I may

have talked to him about the transfer but I couldn't say definitely but I would say that as a general proposition practically all of the investigation of the transfers that I made in St. Joseph was made in the presence of Messrs. Quinn and Spratt. I don't recall any instance specifically where I went back and talked to one of the parties whom we had interviewed jointly. However, since the appraisal I have talked to one of the parties to some of the transfers which we did not interview jointly because the data in so far as the sale was concerned had been agreed to. I talked to the manager or one of the owners of the Famo Mill to get information from him as to the condition of the property when they bought their assembly down there (T. 1076). After reading certain of the matters presented in briefs in connection with the St. Joseph Belt, since my return to St. Joseph, I have interviewed the manager of [fol. 1187] that property, Mr. Michanek. That was day before yesterday. I think Mr. Priestly and Mr. Michanek are partners. I did not interview Mr. Priestly. I couldn't state in terms of full days how many days I actually spent on the property of Respondent. I was there parts of days from time to time. I was not there every day (T. 1077). Every time I went there I would not stay a full day, some days I stayed there for a full day; others only part of a day. That, of course, applies to all the work I did. Some days in the Court House I only spent a fraction of a day there and a fraction of the day in the yards. I couldn't say in terms of days how much time I spent in obtaining information from bank officials, stockyards officials and packing house officials. The interviews were generally collateral to getting other information and didn't take very long. During the working hours I don't recall any other things I did other than the ones about which I have been interrogated. There was one day, I don't recall whether a working day or not, that I had some business in connection with some of my other work at Washington that I took care of while I was there. It was of a minor nature (T. 1078).

My direct examination, together with Government Exhibit No. 128, fully and correctly sets forth as far as I know the investigation which I made in connection with my appraisal of the land of respondent. Obtaining opinions from local real estate men is one of the requirements

of the method prescribed by the Interstate Commerce Commission which is honored to a considerable extent in the breach. In other words, while the instructions require that, experience has proven that little of assistance was gained from that ordinary type of opinion, that it was picked up collaterally where you could get it and there was no specific stricture on failing to get that sort of [fol. 1188] data. The instructions specifically state that this should be done. To my knowledge that instruction has never been changed (T. 1079). I don't know. I only obtained opinions collaterally in talking to people about data that I was investigating in connection with Mr. Quinn and Mr. Spratt. Occasionally I asked some general opinions about values from the people we interviewed.

I know that the property of respondent was appraised in 1929 by a land appraiser employed by the Department of Agriculture. I couldn't state that I have seen his appraisal. I have read the report, read the proceedings in which the figures the appraiser had found were quoted (T. 1080). I read the document which is called "findings, conclusions and order" issued by the Acting Secretary of Agriculture on July 20, 1931. I read part of the transcript pertaining to the land appraisal. In the findings, conclusion and order I noted that the Secretary fixed the value of the land of respondent in Zone A (T. 1081). He also fixed a unit value for a part of Zone C. I gave some consideration to the previous finding of the Acting Secretary of Agriculture in arriving at my opinion of the value of Zone A, but no weight. In so far as Zone A is concerned, the unit value is neither greater nor less than it would have been had I not read or heard about these findings, conclusion and order. The same thing is true as to Zone C (T. 1082).

Zone A

My appraisal is as of the date of the report, November 14, 1932. Referring to page 1001 of the transcript, where I stated that I made a study of the use of the property, I found that Zone A was the intensively used portion of the stockyards, that all of the major activities, such as the [fol. 1189] (T. 1089) loading and unloading of the livestock, and the weighing of the livestock and the buying and selling and inspecting of it in the pens by traders was done on that site, that the Exchange Building in which the business

activities of an institution like the yards takes place, was located within the zone limits, that the facilities for the temporary yarding of the different classes of stock were principally located in Zone A, although my knowledge of the exact yarding function, of course, is limited and some of the uses of additional land that may be classed as yarding by those who are more intimately familiar with the functions of the yard, might exist to a minor extent on one or two of the other zones. I also found that on that zone was where the stock was trucked in and unloaded and trucked out, such of it as was trucked out. That particular Zone A was one upon which certain of the miscellaneous facilities, such as the storage for water and material yard, and things of that kind were located (T. 1090). I would say that the zone as a whole is intensively used. I do not consider the element of intensity of use in connection with this valuation except in so far as it is impossible to divorce one's mind from what goes on on a property. It is difficult to say that you gave it no consideration. A man's mental processes are affected to some extent by what he sees, but I endeavored not to let the intensity of the use sway me in the conclusion I reached as to value. I tried to find a value which would not reflect any intensity of use. It doesn't exactly follow that any difference in intensity from one period to another would have no effect upon my values for the reason that the intensity of the use of this particular zone is, of course, related to the intensity of use in some of the adjacent and adjoining property, namely, in the activities of the packers, and the fact that business was poor or good, in so far as the activities of the related industries were concerned, which I [fol. 1190] considered to be in existence in the course of making the appraisal, of course, I considered that activity. Well, to some extent, (T. 1091) as I say, it is impossible to divorce from one's mind the intensity of use of this particular site, because of its relationship to the activities in the adjoining property, but the value that I sought to place on it was one divorced from any intensity of use of this specific parcel. I investigated intensity of use in connection with the determination of activity in the abutting properties. In investigating the activity of Armour and Company I would have to investigate the facilities of respondent, because of the fact that the commodity which is handled through the yards finds its way into the abutting developments.

Whether the scale is in one place or another makes a difference in what Armour and Company's site might be worth. If the scale was a long way removed from them and they had to drive their stock a considerable distance, it would have an effect on Armour and Company's site. I wanted to know in a general way what the relationship of these facilities (T. 1092) were to the industrial use of the abutting property. If Armour and Company had to drive their stock from the location of their property great distances, it might have an important effect on the value of their site, and, of course, as a foundation and background for what I thought respondent's lands were worth I was trying to get into my mind the range of values for the abutting and adjacent and adjoining lands. The value of Armour and Company's land was one of the items which I had in mind, the range of values for that sort of an industrial site. The intensity of use of the stockyards land would reflect to some extent to the value of Armour and Company's land. To the extent that it would, I tried to divorce that from my mind as far as it was possible. The intensity of use of Armour and Company's land would reflect to some extent into the values [fol. 1191] of the stockyards land adjacent to it. I did not try to divorce that from my mind (T. 1093). I found a connection between the intensity of use of the land of Armour and Company and the intensity of use of the land of respondent. I tried to divorce it from my mind in determination of values. Of course, as I say, it is next to impossible to divorce two things that are as closely related as that, but nevertheless in reaching my conclusion I attempted to take away any weight which I might give to the actual intensity of use on the site that I was appraising. As I say, it is next to impossible to do that.

I read that formerly livestock arrived at the stockyards in train lots shipped by a single owner in earlier days. I learned that that condition has been rapidly changing. I do not know the extent to which livestock now is on a less than carload basis, but I read and was advised of the general conditions in the method of (T. 1094) shipping stock into the yards both here and at other places. I learned that the number of head owned by a single shipper is substantially less than it used to be (T. 1095). I did not learn whether or not that creates an additional demand for land, assuming the same number of head. In a general way I learned that

it was necessary to keep the ownership separate. Just the extent to which it is necessary I am not advised (T. 1096). If it was kept separate, I do not know whether it would require separate pens. In my investigation I did not learn of any other ways in which it could be kept separate without a separate pen, but I can conceive of ways. I do not know whether it would be practical, as I am not a stockyard operator (T. 1097).

Accessibility

On page 1001 of the transcript I testified that my study included the accessibility of the stockyards from the standpoint of roads and streets. I found that the yards are very [fol. 1192] accessible from the outside areas from the standpoint of highway traffic. When you get within the area of the yards itself, the access is provided through the lands of respondent. The area in Packers Avenue and in Illinois Avenue extended westwardly from the city limits is included within the area which I have appraised in Zone A, and, of course, there is a sacrifice of that area to provide access within the zone limits itself. The general approach from the territory which is tributary to the yards and from a highway standpoint is very good. Respondent has itself provided all the necessary accessibility to the proper conduct of its business, but the facilities for it have been inventoried by the engineer. I couldn't improve that method of accessibility, but I would say that in the determination of value of a (T. 1098) particular gross area I would give consideration to the loss of a portion of that area to provide access. In other words, if the area which is now providing the access within the yards itself were a public thoroughfare, the net units which I have on the property would probably be a little bit greater than they are now, but because I include those street beds within the zone limits, my unit is what it is. The effect of what I have done is equivalent to deducting the value of the streets from the value of the adjoining land. I have given consideration and some weight to any importance that may exist in the fact that the stockyards company itself owns and can control these streets. It did not reflect in an increase in the unit of value. As a matter of fact, it was one of the elements which perhaps weighed a little bit to make a lower value than I found. I think the land of respondent is less valuable because it

owns and can control the use of Illinois Avenue and Packers Avenue (T. 1099). I wouldn't say that it would improve the value of those lands if it dedicated Illinois Avenue and Packers Avenue to public use by formal dedication, but I [fol. 1193] would say that in my opinion the values of adjoining lands would be perhaps a little bit greater, and those values are the ones from which I drew my values for the zone area. I did not value respondent's land for the use to which it is being put. I ignored that. I investigated it only to the extent that I gave weight in what I thought would be the effect on the values of the abutting lands were Illinois Avenue and Packers Avenue public streets (T. 1100). If Illinois Avenue and Packers Avenue were dedicated public streets, I am satisfied that my conclusion as to the value of the abutting lands would have been that they were worth more than I think they are, and by the same token, applying my method of valuing, of drawing the value for Zone A from the abutting lands, it would have been reflected in net areas, of course, which would be smaller than the present area of Zone A at higher units. I think the land of Swift and Company and Armour and Company would be more valuable were Packers Avenue and Illinois Avenue public streets. I wouldn't say, off-hand, that Zone A as a whole would be more valuable. It might be even in total more valuable. It would depend, of course. That presupposes a condition which is more or less speculative, and my judgment is that it would probably have an increasing effect in the values of the abutting lands, and the extent to which such an increase took place, of course, is a matter of conjecture. It might even raise the value of respondent's lands above the present total value in spite of the area being somewhat smaller. I have considered the area upon which Packers Avenue and Illinois Avenue exist as purely private thoroughfares (T. 1101). I have considered that the abutting owners, such as Swift and Company and Armour and Company, make use of those streets subject to the right of respondent to keep them off. If that is not a fact I have worked on a false assumption, except that I know that the [fol. 1194] abutting property owners have the right to use them to the extent that they do. That was apparent to me on the ground, but what their legal rights are I am not aware. I have assumed they have no legal rights in the areas. I have not assumed that the Stock Yards Company

could completely exclude them from those two streets. There may be some circumstances under which they could arrange for the use, but I assumed that it is within the power of the Stock Yards Company to do things to the streets which will make them impassable, to the detriment of Armour and Company and Swift and Company. I made a general investigation to see the trucks of Swift and Company and Armour and Company and the cars of their employees driving down these streets (T. 1102). I did not know that another employee of the Department of Agriculture recommended in this proceeding that those were semi-public streets and one-half of Packers Avenue should be excluded as a public street. The fact that the lands would be excluded from consideration as being used by respondent in its business in a proceeding of this sort would not necessarily change the approach that I had to the problem, but if it would come to pass that those streets could be made into public thoroughfares, such as the law would recognize as a public thoroughfare, then I would say that it would have an effect on respondent's land. I did not know that another witness employed by the Department of Agriculture contended that Armour and Company and Swift and Company have unrestricted use of Packers Avenue. That was contrary to my belief, and my appraisal is based on my personal belief (T. 1103).

I learned that the accessibility of respondent's land to railroad facilities was excellent. I also learned that the accessibility to switching service was excellent.

Some of the statistical information which I gathered came [fol. 1195] after I had filed the report so that it is not all in Government Exhibit No. 128. I kept on getting information after I filed the report with the view that if I developed something that would indicate to me that more complete information would make me change my mind, I would have immediately advised the Secretary of Agriculture that I desired to submit a supplemental finding. However, it did not eventuate. Any additional statistical information I gathered had no effect upon my finding, it corroborated my conclusion. The statistical information which is contained in my report is fairly representative of the information of that type which I gathered as a whole (T. 1104).

In addition to the topographic maps contained in Government Exhibit No. 128 and my use of the hand level, I got ad-

ditional topography maps from the City Hall which had elevations on them and also sewer locations, and I studied those maps. They are different maps from those in my report, but the information on them is substantially the same. The topography map in the exhibit gives about as complete a topography for the area as I could find. I did not personally make a topography survey of the property of the respondent nor of the surrounding land (T. 1105).

The Minnesota Rate Cases to which I referred on page 2 of Government Exhibit No. 128 involved railroad valuation. The method prescribed in pamphlet form by the Interstate Commerce Commission governing land appraisals was not specifically referred to in that case. That case was decided prior to the passage of the Valuation Act. The statement appearing in the first paragraph on page 2 is my opinion that the method which I followed was approved in the Minnesota Rate Cases. It is my construction of the Minnesota Rate Cases. It is my construction of that case [fol. 1196] that I am supposed to eliminate entirely the question as to the specific use to which the property of a railroad is being put. It follows, in my opinion, that that would likewise apply to a stockyards (T. 1106). If that conclusion is wrong, I do not know that the valuation would be wrong. I would have to make a further investigation from other approaches to the value problem. I don't know what the conclusion would be. The value may be right. The approach would be wrong if the interpretation which I have put on the Minnesota Rate Cases is wrong. There is more than one way to approach the value of a given piece of land. One way is to consider its present use or present earning power. I would not state that I know of any other general method which is being practiced by real estate appraisers. If I found that my approach was wrong, I don't know what other approach I would use. It would depend upon what the court said. I would try to follow what the court said (T. 1107). I feel that if the court would pass on this method of appraisal and say that my approach was in error and I should have done otherwise, and stated what I should have done, I certainly would attempt to do what the court laid down as the law.

Similar Adjacent Land

Similar adjacent property is property which is of a like kind as to elements of accessibility, topography and advantage of facilities which have an effect upon value, such as the existence of sewers, water, electricity, and matters of that kind, such properties, of course, as have the same, or as good, or nearly as good trackage, all these elements that go to make up the value of any particular piece of property. That covers similarity of use to the extent that the use is for industrial purposes, residential purposes, commercial purposes, or otherwise. I make a further subdivision of the [fol. 1197] groups, industrial, residential, farming and the like. One property may be a very high class residential property, and another medium grade, and another one poor or low grade, and, in the same way, there are types of industrial property, some heavy, some light industrial, there are other types of industrial property that you might say are quasi-commercial, that is to say, do a more or less commercial or sometimes retail business, incident to manufacturing, so that there (T. 1108) are degrees of use there, where the one general type of industrial, residential or farm land would not cover it in detail. Adjacent property is that property which lies next, the one to another, or nearby, when it is adjoining. Property to be similar adjacent property must be reasonably similar and adjacent. I distinguish between similar adjacent and similar adjoining property. Property which adjoins, of course, immediately abuts, and adjacent property may not in my interpretation of the term abut immediately on another. It would have to be reasonably close. There again it is a question of degree, depending on the nature of the property. A farm a mile away may be reasonably adjacent to another one, but in so far as a residential lot is concerned that distance would be out of the question. Paragraph 2, page 2, of Government Exhibit No. 128, in referring to Florence Addition being similar to portions of respondent's property refers to Zone N (T. 1109). In the same paragraph where I state some consideration was given to industrial lands south of Atchison Street and west of Eleventh Street, I referred to Zones A, B, C and D, and to some extent to N. As far as Zone A is concerned, I could not say off-hand that that is reflected in my later discussion of Zone A in which I referred to transfers in that area. Some of this discussion in detail ties into

a part of the text, and I would have to refer to that to see whether I referred to those particular sales. I do not know [fol. 1198] whether I considered any sales in that section without referring to the report. I cite those sales in respect to Zone A at the bottom of page 22. As to the street car service, it is approximately 20 minutes. I inquired from the conductor there how often he ran and he said about every 20 minutes (T. 1111).

Railroad Facilities

There may be another railroad which uses the tracks of the Union Terminal to reach the St. Joseph Belt, but all those roads which I have cited in discussion of the railroad facilities can reach the St. Joseph Belt Railroad without going over the Union Terminal, unless you would say that the portion of the inter-change of the Missouri Pacific is strictly Union Terminal property. I don't know just what the division of ownership of tracks is. It is my understanding that the Missouri Pacific reaches the stockyards over the south of the yards, near Donavan Station, and is transferred across the tracks of the Burlington on to the Union Terminal tracks in order to get to the St. Joseph Belt. I don't know exactly what the limit of the individual track arrangement is. I did not think it was of any importance to determine that so long as I know they could get in (T. 1112). I don't know how the Missouri Pacific comes from the north (T. 1113). The word "whose" in the seventh line from the bottom of page 8 of Government Exhibit No. 128 refers to the Union Terminal. I was not quite sure from reading the tariffs whether the line haul carriers which happened to use the rails of the Union Terminal absorbed the charges of the Union Terminal. I got the impression that they do, as well as the charges of the St. Joseph Belt (T. 1114). In other words, a shipper that uses those lines to reach the stockyards with his livestock will not have to pay [fol. 1199] anything more than the line haul rate to the stockyards. Whatever the charge from the point of origin to the point of destination is, it includes all the necessary services for getting the stock right to the point to which it is being shipped.

I would not state that there are any industrial tracts in St. Joseph which have any better railroad facilities than the tract occupied by respondent. The nearest L. C. L. freight

depot is that of the St. Joseph Belt, located on the west side of Packers Avenue north of Zone D, near the warehouse. It is an advantage to all industries located in that immediate vicinity (T. 1115). Availability to railroad facilities is of value to industries of the type located within the belt made by the St. Joseph Belt Railway Company, but I do not know that it is of extreme value because such investigation as I made of the general freight situation in St. Joe is that switching charges in St. Joe are generally absorbed by the trunk line carriers. Now, there may be instances where, to get from one location to another within the town, switching charges would have to be paid by the shipper to arrange particularly for a convenient movement that was not called for in the general tariffs, but I wouldn't say that the trackage facilities on the site make it any too great an advantage over the general industrial properties that have trackage in St. Joe. It would be my choice of a location in so far as having the advantages of service right to all the trunk line roads, particularly for certain types of industries, but the extent to which I would consider that it gave it an excessive value, wouldn't be so very great.

I think that I would give that considerable weight in determining whether I would locate an industry there. Of course, I would want to know just what charges there might be for switching for the particular industry which I was going to put there, and satisfy myself that there was not [fol. 1200] likely to be some disturbance about the charges if I located down there (T. 1116).

I looked at the Intra-Terminal Tariffs of the railroads in St. Joseph but I cannot say that I am very familiar with them because I am not a tariff expert. I found the situation to be just as I have described it, that for certain types of movements the charges are absorbed and for other types of movements that call for special services the industry has to pay for the movement within the terminal. I am referring to movements out of the stockyards and into the city, or out of the stockyards area into the city proper. At the stockyards the switching to and from all line haul carriers is absorbed. I do not know what the situation is in other industrial locations not on the St. Joseph Belt with sufficient definiteness to testify. I do not know to what extent the same situation exists. As I say, in reading the tariffs I got the impression the charges were absorbed at

other locations I found for what might be, in part at least (T. 1117) analogous services, but that there were other classes of movement where the charges were not absorbed, and I couldn't differentiate between those right now. I know that livestock is shipped out of the stockyards by rail to some extent. I read the statistics. I know that some of it is shipped out by truck and some by rail, but the shipments out don't begin to be nearly as large as the shipments into the yards. I couldn't state the exact number of cars without reference to the statistics. I learned that the products of the slaughter of livestock go out in substantial volume by rail. It is extremely important to a packing house to have access to all trunk line railroads leading out of the stockyards, or out of the City of St. Joseph. I do not know of any other sizable industrial tract that has the same access to all trunk line railroads which lead into St. Joseph (T. 1118).

[fol. 1201] Highway Facilities

Considering the general highway facilities, I wouldn't say there is any industrial tract in St. Joseph with better access to highway facilities. There may be some smaller industrial tracts which have relatively better access for the size of the tract, but taking the general area into consideration I would say that the access into the stockyards location is as good as any. In view of the importance of trucking, that is quite important. It is equally important to the packing plants. I would say that there is no other location in the vicinity of St. Joseph quite as valuable to packing plants of the size of Swift and Company and Armour and Company (T. 1119).

Topography

The elevation shown on page 11 of Government Exhibit No. 128, line 5, is taken from the small scale topographic map on page 41. If an actual survey revealed it to be 817 feet, I would not still contend that 815 was correct. In other words, I did not go into it in the detail that an actual survey would go into it. The purpose of statting it was to give only the approximate elevation above sea level.

Threat of Floods

On the same page in the last two lines, I refer to a threat of flooding which applies to some extent to the land of respondent in Zones N, C and A. This is shown from the next statement which begins at the bottom of page 11 and ends on the top of page 12 about what happened in 1923. It is my understanding that some portions of the stockyards were flooded or covered by water or they were threatened by flood (T. 1120). The water came down into the general vicinity, and the extent to which it was on any zone, neither the man with whom I discussed the situation [fol. 1202] or any record was available to determine, but I gathered the general situation was that during the time of excessive high water referred to some of the water actually ran over some of the lands of respondent. I got that information in conversation with one of the assistant city engineers. I don't recall his name. Such discussion as I have had, not only in the city engineer's office, but down at the yards, lead me to believe that there must have been some flood at some time or other for I understood from talking to the accountants that one of the reasons why some of the accounting records were not available was because they had been flooded out (T. 1121). I don't know where those records were kept, but even if it was in a basement I gathered the impression that there had been some flood of water down there that was certainly serious. It was earlier than 1923. I do not know what the cause of it was. I have set forth on page 12 the best information that I was able to obtain about the flooding of the stockyards in 1923. I talked to Mr. Black about the question of drainage and I understood that there was at least partial confirmation of what I had heard in the City Hall from Mr. Black, but he was not positive about the condition. I wouldn't state that Mr. Black told me that there was any water on any part of respondent's property in 1923. I discussed the situation with him (T. 1122); I don't know what specific questions I asked him at the time. My sole purpose, of course, was to determine whether or not this Whitehead Creek up there was a threat and I satisfied myself that under circumstances it was. I think it is in times of high water, that is, heavy rainfall. To some extent I took that fact into consideration in making my appraisal of respondent's land. It affected my opinion of

value to some extent, but not very much (T. 1123). I am still sure, as stated on the top of page 12, that about 1923 [fol. 1203] the volume of water from the Whitehead drainage area was of such extent as to change the flow into the direction of the stockyards and across the stockyards area until it found its way into the river by way of Brown's Branch drainage ditch. That was my information. I am still sure that is correct. By saying "across the stockyards", I mean across at least Zones N, C and A. My opinion would be that possibility of bother from overflow of water would be an element to be looked into. According to my investigation, I don't know whether the stockyards has actually been bothered. The answer to that question is that you might even have water and not be bothered. I understand that they had overflow of water (T. 1124).

The danger of water from Contrary Creek applies only to Zones F, G, H, and I. I would not think that this danger has been entirely removed by the construction of the new Brown's Branch drainage ditch in 1923. If there is danger there at any time, the construction of the ditch alone would not remove all the hazards. I went down to the location of the creek in an automobile and have looked at the topographical maps that describe its meanderings. It is generally south of the yards a little over a mile. It flows part of the time northerly, then westerly, then southwesterly. The general direction is northerly. I do not know what it empties into, except looking at maps. I did not see the mouth of the creek, but from the looks of the topographic map, it appears to empty into low swales next to the Missouri River (T. 1125). It is not clear to me just how it finds its way into the river. I have never been to the outlet of the creek. I have only seen it from the maps. The point is that in a very unusual rainfall, and that is the only time in which there would be any possible danger from the creek to any portions of the stockyard land, the volume of [fol. 1204] the water coming down from the watershed might be so great that it would break out of its normal channel before it made its bend to the west and run down across the railroad tracks. That would be up in the upper reaches of the creek (T. 1126). I could not say that the watershed is the same for Brown's Branch and Contrary Creek. Brown's Branch is just a partial drainage ditch

and does not serve nearly the drainage area that Contrary Creek serves. There is a dam in the creek itself which, I take it, would hold up some of the excessive flows of the water so that it would act as a corrective influence. I just went down to see the point at which it crossed the roads down along the Memorial Highway. I noticed swales in the farm land. I do not know that I would consider the high lands dikes. I saw high lands and what looked to me like swales. I did not see dikes or dams 8 or 10 feet high (T. 1127). I understand there was never an overflow of the stockyard land from the Missouri River. I heard that at one time the Kansas City Stockyard was flooded by the Missouri River, and I understand that the flood water did not affect the lands of respondent (T. 1128). I do not know when the Contrary Creek last went over its banks and flooded adjacent property. The discussions I had about it were that it had happened, but how recently I do not know. I gathered that it was earlier than within the last 10 years. I do not know to what extent dikes and drainage ditches in that same locality have been constructed since the last time of a flood of that character.

I gave consideration to the flooding of Whitehead and Contrary, although, as I stated, not very much weight. I gave it some weight.

I stated on page 12 that a 4-foot sewer seems to be stopped up so that water stands on Second Street. That affects the drainage of Zone N to some extent (T. 1129), [fol. 1205] because that sewer runs across parts of Zone N. I felt that the sewer must be stopped up because I was here during several rain storms, and every time I turned down on Second Street, there was a pool of water standing in the road. I felt if the sewer had had proper drainage, it would not stand there. It sometimes stands there as long as 48 hours. That is about a quarter of a mile from Zone N. I do not know if there is any connection between the water I saw standing and this 4-foot sewer but it was in the approximate location of that sewer as shown on the map, and I figured that was where the natural outlet was (T. 1130). I concluded that because that water was standing there, the 4-foot sewer was clogged up and, therefore, had not properly performed its function. I would not say the sewer was not properly draining Zone N, but if the sewer is not kept open, it would affect the draining of Zone

N. If there was no opening in that 4-foot sewer, it would change the conclusion that I have that the sewer was not being kept open and that Zone N was not being properly drained. Generally a sewer drains only such portions of land that have direct connection with it. If Second Street has no connection at all with this 4-foot sewer, I would not expect it to drain Second Street. Because it does not drain Second Street under those circumstances, that would not give any indication as to whether the 4-foot sewer was properly kept up (T. 1131). Generally I considered that Zone N was properly drained and that it appeared that the sewer that drained it was not properly kept up. I would not say that it had any effect upon my consideration of the value of Zone N, except that it was one of the things I was looking into and had in my mind as to a possibility that it might hurt the land. It was not objectionable because it was not manifest that it in any way was hurting the land (T. 1132). It was a possible objectionable feature.

[fol. 1206] Assessments

Referring to the statement on page 13 that assessments are of some worth in disclosing relative values, when I look at the assessments in general and see that one street frontage is assessed materially higher than another, the value of the assessment to an appraiser is that it gives the indication of the assessor that he considers one location more valuable than another, but as to the specific value, that would not follow necessarily. I found that assessments of real estate for taxation purposes in the city of St. Joseph and Buchanan County are no guide to the true values of the real estate, in so far as actual worth is concerned. That is my opinion. It is my opinion that the values put on for taxation purposes are not the true value of the land being taxed (T. 1133). I think the tax values are a sort of a hodge-podge. Sometimes a piece of land may be assessed somewhere near its true value, and another time it may be miles off. Sometimes adjoining properties might be assessed at different valuations. Notwithstanding this, I think to some extent they are of some worth in disclosing relative values. I am taking average conditions. I think that the average assessment on one street and the average assessment on another, when contrasted would give you an indication as

to whether one street frontage was considered more valuable than another. I did not investigate it far enough to find out that perhaps the assessor was entirely wrong on one street (T. 1134). It would be a better guide to go out and look at the general neighborhood. I did not use assessments as a method of disclosing relative values. I make that statement that that is the only possible worth of the assessments, in so far as I looked at them. The statement is made for the purpose of showing why I did not give assessments any weight. I did not use this method of disclosing relative values of different street frontages, refer- [fol. 1207] ring to property in zones 1, 2, and 3. Government Exhibit No. 128 may contain some other statements similar to the one we have just referred to, which I did not use in arriving at my values. Some of these statements, like the statement of assessments, are put in the report as collateral information to show why I did not give them weight, rather than to show I did give them weight (T. 1135). I think that the Secretary could tell from reading the report the ones to which I gave weight. I think generally I emphasized the important ones on direct examination, but there may be some that I overlooked.

Plottage and Assembly

On page 14, by plottage and assembly, I mean by that that if I had considered the value of a zone like Zone A as being composed of small tracts instead of the entire area, that my value would have been lower than it is. In other words, because it is a complete and assembled area, I have placed a higher value on it than I think individual small tracts in the area would command. In assembling certain types of industrial lands and certain types of commercial lands, it is very often the case that the total assembled land will be more valuable than the sum of the small acquisitions.

That is the reason I have included this item of plottage and assembly (T. 1136). It is an element that tends to increase, in my judgment, the value of respondent's land. I considered the element as applicable to individual zones. In other words, Zone A as a whole had a greater value than the sum of dividing it into 10 or 15 smaller tracts. I have no particular percentage which I ascribe to the element of plottage and assembly. I exercised what I think to be my

best judgment. I just consider that the property would be [fol. 1208] worth more money because of this plottage and assembly and weight that, along with the other things I am considering, reach a figure, in my mind, that reflects the total unit value that ought to go onto the site (T. 1137). In my mental processes I would just arrive at the value of the land in Zone A, exclusive of plottage and assembly, and then add another amount to cover this additional item. My method of appraising real estate is not an exact science. It depends very largely upon the opinion and judgment of the man making the appraisal.

Recession in Value

Referring to page 15, Government Exhibit No. 128, where I state that I received certain expressions of opinion as to the extent of the recession of values since 1930. I could not state the persons by name who gave these expressions. In the course of investigation I asked for such expressions from a number of people. Sometimes it was in the presence of Mr. Spratt and Mr. Quinn. It would arise out of investigating a particular transfer, and maybe there would be a query, if the transfer were, we will (T. 1138) say, anywhere back of 1928 or 1929. I would sometimes ask the witness what, in his opinion, we would get for the same land now, or what he would think I should get for that, what he himself would pay. That was chiefly in connection with my investigation of respondent's land and also in connection with such discussions as I had in the assessor's office. I asked the deputy commissioner up there whether there was any recession in value in the neighborhood and got an expression that there was. It was a Mr. Powell. I did not ask him specifically in reference to that portion of respondent's land which lies within the belt made by the St. Joseph Railroad Co. I gave that opinion [fol. 1209] some weight in the formation of a general opinion as to level of values. I did not give it any weight as far as zone A is concerned as an individual zone (T. 1139). By reason of that statement I neither increased nor decreased the unit value in Zone A. My value for Zone A would have been just the same if that statement had not been made. It would apply likewise to all of the zones; that is to say, the weight that I would give to any individual statement, unsupported by any of the rest of the investigation which

I made, would be very little. In other words, I might have omitted talking to any one of these people who gave that expression of opinion, and still reach the same conclusion as to value. If I had omitted the interviews which resulted in the expression of opinion as to the extent of the recession, varying from 25 to 75 per cent below that level of value, referring to 1930, my value in Zone A would have been a little bit greater. I could not state any percentage because I would have to consider that in the light of the information I gathered (T. 1140). The same answer would be true as to each and every zone. In the appraisal of real property I would not place a value upon a property predicated on boom conditions. That would be just the opposite of a depressed condition. Both should be excluded for like reasons. The values I have placed upon respondent's land in Zone A do not reflect a depressed condition in real estate values. They reflect recession. The recession is at least of sufficient extent that I feel that improvement to the levels from which values have fallen is not imminent. There may be some improvement, but I do not believe that retracement in values will be back to the peak levels of value very shortly. By peak levels I do not mean normal (T. 1141) but something higher than normal. I consider that the values in Zone A have receded below normal to a little [fol. 1210] extent, not very far. The period for several years prior to 1930 is what I consider the normal period. This recessed condition is some place between temporary and permanent. In other words, it is going to last a little too long to be called temporary, and probably will not last long enough to be called permanent. I said stagnation of values is evidenced by a cessation of normal transfers of property. I stated there was stagnation of values in the stockyard district and in the city, but not as to the individual zone. I would not say there is a stagnation of values in Zone A, because it is the kind of property that is not in the market (T. 1142).

Sale No. 5

There is one sale within the limit of the belt formed by the St. Joseph Belt Railway Co. that is a bona fide sale. That does not mean that I consider it a normal sale. I consider sale No. 5 a bona fide sale. Sale No. 53-A is a bona fide sale, but I do not consider it normal. I define a bona

fide sale as an actual sale of property for a consideration. A sale that has all the elements of a fair exchange and which should be given full weight in arriving at my values I would call a normal, bona fide sale (T. 1143). I did not find any normal, bona fide sales within the belt, although sale No. 5 was very nearly a normal, bona fide sale. That is the sale from Henry Veeder and wife to the St. Joseph Warehouse & Cold Storage Co. I was aware that there was a relationship between the St. Joseph Stock Yards Company and the St. Joseph Warehouse & Cold Storage Company but I did not know the extent. I would not think it was quite as close as the Stock Yards Company's owning all the stock of the warehouse company. If I found it was that close, I would not say that it was a normal, bona fide sale, although I still think it is very nearly a normal sale (T. 1144). It would be [fol. 1211] of the nature of a sale not at arm's length, or within the family, under the circumstances you state, although my understanding was that it came close to being a sale at arm's length. I treated it as substantially such.

In so far as any changes have been made in the areas of Zones A and B since the preparation of Government Exhibit No. 128, they should be corrected on page 20 of that exhibit (T. 1145). The change of a half acre any way between zones A and B would not affect the unit values materially (T. 1146).

Respondent's Exhibit No. 100 is a correct copy of my contract for the appraisal of the land of respondent and referred to on the flyleaf preceding page 1 of Government Exhibit No. 128, with the exception that the compensation has been deleted (T. 1146).

RESPONDENT'S EXHIBIT No. 100

Contract for Appraisal of Land

This Agreement made as of the date hereinafter noted by and between the United States of America, by the Acting Secretary of Agriculture, party of the first part, and John A. Zelinski, Washington, D. C., party of the second part, WITNESSETH:

Whereas, the party of the first part desires an appraisal of the land occupied by the St. Joseph Stock Yards Company, of South St. Joseph, Missouri, hereinafter called the stockyard company, and certain data regarding the value of land in and near the City of South St. Joseph, Missouri; and

Whereas, the party of the second part has information and access to information regarding this data; and

[fol. 1212] Whereas, the party of the second part through many years of experience is qualified to appraise land and is not now and never has been connected in any way, directly or indirectly, with the stockyard company and is qualified to give an unbiased opinion as to the value of the land;

Therefore, for and in consideration of —— paid by the party of the first part, receipt of which is hereby acknowledged, and other valuable considerations, hereinafter named, the party of the second part agrees to prepare a report based on his knowledge and experience and compiled from his records and those to which he has access, said report to include the description, location, area, consideration, value of revenue stamps, names of owners of property from whom acquired by the stockyard company and property adjacent to and in the vicinity of the stockyards also prices at which land is offered for sale either by the owner or by a real estate dealer, also an estimated value of the improvements on the lands other than those owned by the stockyards contained in the report, together with the net value per square foot of the bare land.

The party of the second part further agrees to include in his report a compilation of the real estate transfers showing description, location, area, consideration, value of revenue stamps and names of parties named in the deeds of the following lands:

1. Land upon which the said stockyards are located in St. Joseph, Missouri.

2. Vacant lands transferred in recent years located adjacent to the stockyards.

3. Lands with improvements transferred in recent years located adjacent to the stockyards.

[fol. 1213] 4. Vacant lands transferred in recent years located in the vicinity of, but not immediately adjacent to, the stockyards.

5. Lands with improvements transferred in recent years located in the vicinity of, but not immediately adjacent to, the stockyards.

6. Any other transfers which in the opinion of the party of the second part may have a material bearing upon the value of the lands of the St. Joseph Stock Yards Company.

7. The party of the second part further agrees that he will retain at his own expense and pay for the services of any St. Joseph abstractor or realtor as the party of the second part may desire for the assisting in the compilation or supporting appraisal data.

It is understood that the party of the second part shall include in his report a detailed statement of the fair present values of the different portions of the bare land exclusive of all improvements owned by the stockyard company.

The party of the second part further agrees to obtain or endeavor to obtain any further information or data which may enable the Department to arrive at the fair value of the bare land owned by the stockyard company.

The party of the second part further agrees to make such additional investigations, studies, and surveys of general real estate values, railroads and other transportation facilities, local economic and industrial conditions and such other factors in and about St. Joseph, Missouri, which may bear upon the general value for industrial or other purposes of the stockyard company's lands, as will enable him to testify, and withstand cross-examination, as [fol. 1214] an expert as to the values of the lands of the St. Joseph Stock Yards Company.

The party of the second part further agrees either to deliver in person or to mail the complete report by six o'clock p. m., November 14, 1932, to John R. Mohler, Chief, Bureau of Animal Industry, Department of Agriculture, Washington, D. C.

The party of the second part further agrees to testify before and present his report to the Secretary of Agriculture, or his representative, at a hearing to be held in St. Joseph, Missouri, to qualify as an expert land appraiser and withstand cross-examination.

The party of the second part further agrees to testify and present his report at subsequent hearings and to again qualify as an expert land appraiser and withstand cross-examination in a Federal Court, if required.

For all this and these services the party of the first part agrees to pay the party of the second part as follows:

For the complete report the sum of —, one-half of which is to be paid within ninety days after receipt of the report by the party of the first part and the balance after the hearing at which testimony is given by the party of the second part before the Secretary of Agriculture, or his representative. In the event that the party of the second part becomes incapacitated or fails to appear, or after appearing fails properly to qualify and/or testify at the hearing before the Secretary of Agriculture, or his representative, then the only compensation to be paid to the party of the second part will be the one-half named above, namely, —, for the complete report. In case no hearing, at which the party of the second part is called upon to appear, is held within one year after receipt of the report, [fol. 1215] the above noted balance shall be paid at the end of one year from date of receipt of the report.

The party of the first part also agrees to pay to the party of the second part in addition to the sum hereinbefore enumerated the sum of — per day for appearance at any and all hearings. This payment will be made within sixty days after such appearance. The term "appearance" as used in the paragraph shall be construed to include and mean each and every day or part thereof necessarily spent in travel to and from the place of hearing and while present thereat by direction of representatives of parties of the first part excluding Sundays and legal holidays.

Should any hearing in this case be held outside of Washington, D. C., necessitating traveling and hotel expenses on the part of the party of the second part, beyond those incurred in the preparation of the initial report, then the party of the first part will pay traveling and hotel expenses in addition to the above per diem fee, in accordance with Standardized Government Travel Regulations.

Signed in duplicate this 3rd day of September, 1932.

United States of America, by (Signed) C. F. Marvin, Acting Secretary of Agriculture. John A. Zelinski, by (Signed) John A. Zelinski, Title.

Referring to page 22 of Government Exhibit No. 128, I made the statement, "there are no sales of strictly similar lands in the vicinity of this zone, etc." That is still my [fol. 1216] opinion. The only strictly similar land is within the belt formed by the St. Joseph Belt Railway Co., and that is what I meant when I used those words "strictly similar lands" on page 22. I could not say to which of these 23 transfers I gave the most consideration in respect to Zone A. I gave more consideration to some than others, and I could probably state the class of those which I gave more consideration to than others, but not which one I gave the most consideration. I gave more consideration to sales like 10 or also called 63, and 11 and 14 and 12, than I did to sales like 6, 7, and 8 (T. 1148); and I also gave more consideration to that type of sale than I did to the leases like No. 19, 20, 21, and 22. That is about the most definite statement I can make. I gave probably a little bit less consideration to transfers 43 to 50 inclusive, 33-X, 34, 35, 38, 39, 40, and 41, than to 10, 11, 12, and 14. I could not state whether I gave more consideration to that group, which lie east of the railroad tracks and in the city limits, than to transfers 6, 7, and 8. Of course, in forming my judgment at the time I had all these data before me, I tried to weigh them relatively, and I would not state that I gave any of the last-mentioned group more weight than the others. Sales 34, 35, 38, 39, 40, and 41 I would consider from the standpoint of whether on a par with the leases, which are Nos. 19, 20, 21, and 22 (T. 1149). I did not give those sales and the leases quite as much consideration as sales 6, 7, and 8. Of course, the reasons for giving consideration to any one sale or the group of sales, and the relative importance of weight is not due to the same factor. One sale or transaction may possess factors which tend to weigh, which that other one does not, and to state just exactly the relationship is a little bit difficult. I cannot state definitely. I made an attempt to weigh one sale against another as to its relative importance when I had [fol. 1217] all the facts before me. I have the facts now, but my reasoning at the time of the making of the appraisal was one of concentration at the moment on the particular task at hand, and the weighing-in process was not interrupted by questioning and matters of that kind. In

other words, I went into a huddle with myself to determine just exactly how much one element weighed, one transfer weighed, and another transfer weighed, and out of that (T. 1150) huddle came to the conclusion that, considering all of these data, certain levels of value appeared to be reasonable to me. To any definite extent I have now forgotten what went through my mind in the course of that huddle. I do not remember my reasoning at the moment (T. 1151). Because of the fact that I am now on the witness stand under cross-examination, I cannot go through the same mental processes right now.

Grain Belt Mills Sales

Sale No. 6, appearing on page 54 of Government Exhibit No. 128, was the first Grain Belt Mills purchase. At that time I understand the tanning company site was used, which is in the vicinity of the Grain Belt Mills and which is marked on one of the maps attached to my exhibit. With the exception of that, there was no development in the tract now occupied by the Grain Belt Mills. It was in the nature of land that had not been used for industrial purposes. It had not been developed (T. 1152). I understand it was substantially level. It had to have certain leveling off done to make it ready for occupancy. It was just in the state that you find lands of that type when there has been no use made of them. Sale No. 7 is also a purchase by the Grain Belt Mills. When I considered the transfer to the Grain Belt Mills I had in [fol. 1218] mind sales 6 and 7 and identified them as one. Sale 7 was made about five years after sale 6 (T. 1153). The land had been developed in the meantime. There were milling improvements on the land covered by sale 6. The second sale was in 1922. Sale 8 is adjacent to sale 7. On page 22, when I referred to sale 6 I also meant to include sales 7 and 8. In sale 8 the Union Terminal Company acquired that tract to straighten out its right of way. It already held certain other lands between Lake Road and the right of way line of the St. Joseph Belt, and all these lands were acquired to give it possession of the land between the road and the St. Joseph Belt right of way (T. 1154). I would presume that this situation had some connection with the construction of the plant of the Grain Belt

Mills. The land covered by sales 6, 7, and 8 as a group does not have as good accessibility to street car and bus service as Zone A, but the former is much poorer. Considering the area of the tract, accessibility to paved highways of the former is very nearly as good. The actual paving of Lake Road with a hard surface stops a little bit before you get to that particular property, but there is a temporary surfacing in the vicinity of the property that is pretty good. It keeps it out of the mud in wet weather. I do not know as that was in existence at the time of the first sale, which is No. 6 (T. 1155). I do not know whether or not the Grain Belt Mills put in that surfacing. I was informed that the surfacing of Lake Road was put in by the industries, but just to the extent to which any one did it, I do not know. I understand the Stewart-Insoboard did some work on improving Lake Road. That was after they purchased their site in 1927 and 1928. The accessibility of the Grain Belt Mills tracts to highways is nearly as good as Zone A. I would say about 80 per cent as good. [fol. 1219] I should think an expenditure of $1500 to $2,000 (T. 1156) would make that access to improved roads as good for that amount of area as Zone A. I am merely taking into consideration the cost of paving the balance of Lake Road with concrete or some similar hard surface. If that were done, the accessibility to highways, in my opinion, would be equally as good as Zone A. I am positive of that and am satisfied of it. I do not think one method of ingress or egress is as good as more than one, but it depends, when it comes to accessibility, on the method of ingress and egress as well as the number of exits and entrances (T. 1157). In that estimate of $1500 for paving, I had in mind paving that portion of Lake Road east to the junction with the concrete. I think there is a little concrete some distance west of Packers Ave. I do not know the exact amount. I arrived at the $1500 by giving consideration to the distance from the existing pavement (T. 1158). I assumed it to be somewhere in the vicinity of 700 or 800 feet. If it were twice that far, it would cost twice that much. I did not assume any specific width. What I had in mind was that a mile of pretty good hard-surfaced road could be put down for $9,000 to $10,000 if you do not make it too wide. Looking at the distance, I thought $1500

would just about do the job. I figured 700 or 800 feet was a certain portion of a mile and took that percentage of $9,000 or $10,000.

I would not say that the Grain Belt Mills tract had railroad and switching facilities quite as good as Zone A, but still very good (T. 1159). The element of plottage and assembly would not enter into the Grain Belt Mills tract to the same extent as in Zone A. It would hardly be present at all in the Grain Belt Mills tract. I do not consider the land covered by the Grain Belt Mills tract to be quite as valuable as Zone A. I have just general figures in mind and consider it less valuable than Zone A but not very [fol. 1220] much less. When I went into this huddle about which I spoke, I went through the mental processes of determining the land value of the two tracts. I was weighing other factors with it at the same time. If the Grain Belt Mills tract were not occupied by the Grain Belt Mills, it might be available for use for a small stockyard (T. 1160). It would be pretty small. It would be at the back door rather than the front door of the packing plants. Intervening would be quite a network of railroad tracks. I do not understand that any one of them is a line haul carrier, unless the Union Terminal is such. Other railroads use those tracks in that section for switching purposes, as I understand. I understand they use them sometimes for handling passenger coaches. I do not know whether passengers are actually moved on it. I understand that at some time or other some of the trunk lines do use the Union Terminal tracks to get to Lake Contrary, or use them for storage of coaches (T. 1161). I do not know just what the arrangement is. I do not know whether there are regular, scheduled passenger trains that pass over that portion of the Union Terminal. A number of railroads intervening between the stockyards and the packing plants would be some hazard. They would either have to build a viaduct or a subway. I do not think that having 4 or 5 railroads running down the middle of Packers Ave. would be such a very great handicap for stockyard use, being that close, because even with the ordinary highway use that is made of Packers Ave., there have been viaducts and runways built under and over the area, and it seems to have had no particular influence in hurting the movement of stock by moving it up and down the viaduct and the runway, as it is now con-

structed, and I see no reason why a similar one could not be constructed over tracks on Packers Ave. (T. 1162). [fol. 1221] From the Grain Belt Mills tract it would be much longer to the packing plants. Zones K, L, and M are substantially immediately adjacent to the Grain Belt Mills tract. Only a small part of M reaches down there, but generally speaking they are just across the road from the Grain Belt Mills tract.

Sale No. 10

Sale No. 10 is one of the sales to which I gave more consideration in respect to Zone A than to some of the others. This is the tract, a portion of which was later leased by the Union Terminal and which leases are covered by sales sheets 19 and 20 (T. 1163). I do not know what expenditures the Union Terminal had to make to get this land in shape to lease, but I figure that there was some expenditure because the topography of the land indicated to me that some work had to be done to prepare it for use. I took that into consideration in determining the weight to be given that sale. I could not specifically state how much money would be spent in that connection. I did not consider that it would cost $7,500. If it did, my estimate would be low to that extent (T. 1164). I do not know the amount of expenditure that was necessary by the lessees. I considered only what appeared to me to be the total expenditure necessary to prepare that site based on what the topography was when I saw it. I cannot state the specific figure for the total expenditure, but in round figures approximately $1,000 an acre would take care of preparing that land for use. If the industry wanted to make a special building up of this site, I would not consider that that was a part of the cost of the land, that is to say, incident to the construction of a certain type of structure, if the industry had to spend money for improvement, I would not consider that [fol. 1222] that was a charge that was applicable to the land. I would say it was rather a charge applicable to the construction of the plant. In some instances filling up land to the level of the street is special construction. It might very well be usable if it was below the street level. To be comparable with land that is up even to street level it would have to be filled to that level. I found portions of Zone A that are used, filled to street level (T. 1165).

I could not state with exactitude that all of them were up to street level, but in general I would say that that is the appearance. In detail I do not know the relative elevation of the tract covered by Sale 10 as compared to Zone A. I know that parts of Sale No. 10 are lower than Zone A. There might be as much as a 3 or 4 foot difference in spots, and then in other spots about 1 foot difference, but I could not state the exact difference in elevation. I did not go into any such close attempt to measure differences. I would be surprised to learn that Zone A is on the average as high as 5 feet above Sale No. 10 (T. 1166). I would not be exactly surprised if the average was somewhere between 4 and 5 feet. It is possible. I would rather be disillusioned, you might say, as to the extent of difference that I thought was there. I knew there was some difference but I did not [illegible] hat it was quite that much (T. 1167). I understand y[illegible] referring to the condition of Sale No. 10 at the time of the sale. In my consideration of Sale No. 10 I did not consider it to be that much below Zone A. I don't know if Sale No. 10 had any railroad facilities at the time of sale. I know that a track was put in there at the time the industries leased the land, or at least the industries made their leases with an understanding they would have trackage. I consider the accessibility of Sale No. 10 as good as Zone A. I am going on the basis that the accessibility via Lake Road for as small a tract of land as [fol. 1223] this is as good as that into Zone A, a large part of the access to which comes right by this tract. A large part of it comes from Illinois Avenue or across the tracks of the railroads and across the tracks of the St. Joseph Belt from Illinois Avenue (T. 1168). It comes across from Missouri Avenue in part also, but it has to cross the tracks of the Belt Railway. The truck-in division is at Missouri Avenue. Exchange Street, in so far as Zone A is concerned, is also separated from the zone by the tracks of the St. Joseph Belt Railway. I do not consider the land covered by Sale No. 10 would be as valuable as Zone A. That sale is immediately adjacent to Zone N. It is just across the road from Zone C, which intervenes between it and the nearest portion of Zone A (T. 1169). That tract is not as accessible to streetcar and bus service as Zone A.

I did not learn that the Grain Belt Mills had to furnish automobile transportation for its employees from the plant

to the streetcar. That would not necessarily have any bearing upon the value of an industrial location. It might be just a service of convenience. If it was necessary to get employees, it would be of some importance.

Sometimes availability only to a stub end is as valuable as availability to railroad tracks which run either way, depending on the general situation. If more than one industry is using the same stub end track, it would not necessarily be inconvenient, depending upon the amount of traffic that is handled (T. 1170). If there was a great deal of traffic, it might be inconvenient.

Larabee Mills Sales

Transfers 11, 12, 13, and 14 all concern the Larabee Mills location. Eleven was the first sale and 14 is the latest. Eleven and 14 are the acquisition of the plant tract. Sale [fol. 1224] No. 12 represents the acquisition by the Union Terminal of slightly over 11 acres which six months later was sold by Sale No. 14 in part to the Larabee Mills. Sale No. 13 is really a financing feature which has no bearing upon the values in this proceeding (T. 1171). It is entitled to no weight. It is quoted to show the continuity of the transfers in the particular area. The most weight was given to Sale No. 14. The Larabee Mills placed improvements of substantial character on this land, such as flour mills and grain elevators. It appears to me that they must have also built railroad tracks on some portions of it because certain of the tracks are right in their own area and, as is usually the case in instances of that kind, the industry has to pay for the construction of tracks that are right on its own area (T. 1172). It was necessary to do some grading before this land could be used. It was necessary to fill the land in part. I do not know the exact extent. From observation I estimated the approximate extent. I figured that if you put an average fill on the land of about two feet, it would take care of all of the necessary grading of the plant. That does not mean to say that that would bring it up to the level of the railroad tracks because that plant functions without being exactly to the level of the yard tracks to the west of it. There is some difference in elevation on the average between the land, under the plant,

and the land under the ties, but the extent of the fill that has been made in there to make the land usable for that particular industry appears to me to be about two feet, on the average (T. 1173). I consider that fact in connection with the weight that should be given to Sales 11 and 14 (T. 1173). If I underestimated the amount of the fill, the weight that I gave the question of fill would be inaccurate to a limited extent only (T. 1174). It would not necessarily be to the extent of the difference between what I [fol. 1225] estimated and what the actual amount of fill was because, in estimating what the value of the filled site was, I don't take any conclusion that I reach in my mind and carry it right over and place it in another place. In other words, a specific piece of information may vary in the derived unit 5 or 10 per cent, and the weight that I give to it when it is not necessarily very large on the specific transaction, wouldn't be affected materially by so much as an error of 5 or 10 per cent in conclusion as to the value of the information that I am considering relevant, so that, while it may affect the finding some, I don't think it would do it seriously. In other words, if the estimate of an average fill of 2 feet on these sales is low, I probably have unconsciously minimized the value in transfer, but, to what extent, I wouldn't know definitely, but it wouldn't be very much. It would depend on how much I underestimated it. In my investigation in Washington I read Mr. Kosters' testimony in Finance Docket No. 3906, Excess Income, St. Joseph Belt Railway Company about the amount of fill that was actually put into these tracts. I don't recall what he said about it, but I had that in mind when I made my (T. 1175) investigation of the particular properties on the ground, and I reached the conclusion that Mr. Kosters' estimate of the fill was a little bit too liberal. I did not know whether or not Mr. Kosters had any connection with putting in that fill. If Mr. Kosters showed me the basis on which he figured the yardage and how he distributed it over the total area, it might change my mind as to whether he was liberal or not, but not just because Mr. Kosters had something to do with the fill, unless he went out and specifically measured it and had quantities for estimate; and the matter would still be estimates of two men who looked at the same piece of property. If he put it in and approved the vouchers for the payment of it, he would have a

[fol. 1226] source of information which I did not have and which would tend to make his answer more accurate (T. 1176). The Larabee Mills purchases, Sales 11 and 14, are not as accessible to streetcar and bus transportation as Zone A. They are a little further removed from streetcar and bus transportation. They are a little bit further removed from improved highways as well. As far as Sale 11 is concerned, Florence Avenue has a fairly hard surface. I would not consider it a bad road. Good highway access is not essential to an industry of the type of the Larabee Mills. At the time of the purchase the railroad facilities were available as they are on any industrial tract or any tract that borders a railroad. The detailed provision of the use of the facilities is something that comes after the purchase of the land (T. 1178). The situation over there is different to the extent that trackage wouldn't be as available in those sales as it is in Zone A. In the Larabee tract it would require, under certain circumstances, the construction of tracks on the land owned by Larabee at their expense. If the business that was likely to be produced by the industry appeared sufficient to justify it, the railroads serving might go in and buy sufficient land to put in a track of their own, at least a lead track of their own. I have known that to happen. Railroads regulated by the Interstate Commerce Commission would not buy a right-of-way inside an industrial tract, but they would buy one right alongside of an industrial tract. In this instance, I don't know if the Union Terminal would have to buy a substantial amount of land (T. 1179). In so far as I know, the Larabee Mills is served by industrial tracks which are owned by them, except that I know, of course, the transfers came from the trustee for the Union Terminal, and I assumed that the matter of trackage arrangements under circumstances of that kind could very easily have been provided for. In so far as I know, the manner [fol. 1227] in which it was provided for was that the Larabee Mills built or paid for the tracks that were on its own property. I am not assuming that the sale price was less because of this added expenditure. I meant that in so far as my provision for access for trackage is concerned that the Union Terminal interests were in a better position to get a price for their land because of the opportunity to get in there with a track than if they had to independ-

ently go out and buy land to get into the tract (T. 1180). By that statement I mean that an industry locating on lands which were coming from a railroad could anticipate getting trackage into the site more readily than if the industry had to go out and purchase the right-of-way to get into it. All other things being equal and I could get along with the existing track of the railroad company and it served my interests, I would probably pay a little bit more for land which had adjacent to it suitable trackage than I would if I had to use part of my own land for the trackage. I would also have to pay the cost of trackage which would be another element. In other words, when a man takes up an industrial location, he necessarily must consider all the costs of finishing his industrial plant to the place where he can use it for the purposes for which he has constructed it, and if he has to build a side track, that is an item of expense (T. 1181). As compared to an identical industrial tract where he did not have to build a side track, there would be a disadvantage of the first over the second in that respect. Of course, very often the industry prefers to have the track on its own land, even though the other is available, for the reason that it gives them a certain control over the use of the track which they couldn't have when restricted so long as the track was solely on the right-of-way of the carrier serving them. I made a general investigation to determine that the respondent gets service right direct from the tracks and in [fol. 1228] part over its own facilities when it comes to loading and unloading. In other words, the service is very direct. The track is not on its own land. It is getting excellent railroad service (T. 1182). I can conceive of conditions where respondent would be bettered if it owned the land under those tracks and also the tracks. My opinion is that they might better themselves by controlling the tracks themselves under circumstances where they could directly dictate the conditions of operation where, when the tracks are independently owned, they have to be, of course, more or less amenable to the wishes of the operators of the railroad. I do not know in what specific respects the ownership and control of those tracks and the land underlying them could improve the present service that respondent is getting (T. 1183). I think the respondent gets all the servive that it needs, but I am not enough of an operator of

railroads or of an industry of this kind, or don't know enough about the operation in detail to be able to state whether or not the service could be improved, even though it is very good. I do not think that the tract occupied by the Larabee Mills would be very attractive for use for stockyards purposes in and of itself. If it was used, it would have to be used in connection with land to the south and east thereof as a practical matter. The Larabee tract is immediately adjacent to Zone N. It is not immediately adjacent to any other zones. On page 22 I have made no reference to Sales 3 and 4 (T. 1184). That was accidental, because to me the sales were a part of the general group of mill sales the same as Sales 7 and 8 had a relationship to Sale 6. The identification of the big tracts brought with them identification of the others. Sales 3 and 4 are immediately adjacent to the Larabee Mills tract and a little bit to the west of it. The situation in respect to the Larabee Mills tract would be substantially the same as to the [fol. 1229] tract occupied by Sales 3 and 4 (T. 1185). The map upon which the sales are shown, which is Supplemental Map No. 3, does not show the location of each sale with absolute accuracy. The locations are approximate. There are some tracks across the land occupied by Sales 14 and 10 which have been constructed since the map was made. If the same series of questions were asked about Sales 3 and 4 as were asked about the Larabee sales the answers would be substantially the same. There would be possibly one exception and that is that there is no access to a public highway from Sales 3 and 4. That is likewise true of Sale 14, except in connection with Sale No. 11 (T. 1186.) I would consider that the Larabee Mills tract had the element of plottage and assembly to a small extent, but not Sales 3 and 4. The Larabee Mills tract would not have it to the same extent as Zone A.

Sale No. 5

I could not say how much consideration I gave to Sale No. 5. I gave it more than to Sales 6, 7 and 8. I gave it approximately the same weight as Sales 11, 14, 3 and 4. It was considered at the same time, but I could not state definitely just the weighting of the sales now. I gave Sale 5 perhaps the same weight as Sale 10 (T. 1187). I could not state offhand relatively how the weight given

to Sale 5 would compare to the weight given to the group of transfers known as the Famo Mills. I did not consider the Famo Mills transfers at the same time I had Sale No. 5 in my mind, they being in a different location, in the city limits. I was not contrasting the two, so I could not say in so far as the Famo Mills transfers are concerned. I did not know the extent of the relationship existing between the Stock Yards Company and the St. Joseph Warehouse and Cold Storage Company at the time of the sale. I knew there was some relationship. I do not think that [fol. 1230] caused me to lessen the amount of weight I would normally give such a sale. If I had known the full extent of the ownership, it would not have materially changed my mental calculation. I cannot say definitely. Sale No. 5 has no outlet by public roadway. There is a cinder, brick, or dirt drive in back there by which you can reach the parcel (T. 1188). It runs over land of the respondent and also the Belt Railway tracks. In and of itself, as an individual parcel, it has no direct legal access. I took that into consideration in considering this sale. This sale is closest to Zone C. It is also fairly close to Zone D.

Sale No. 53-A

I gave Sale No. 53-A considerable consideration because I thought for a while it might develop that the sale was an indicator of value until I got to the facts surrounding it and satisfied myself that it was not, and stopped giving it any further consideration as an indicator of value. I gave it very little weight. It might have influenced me a trifle, but I would say very little (T. 1189). If I had ignored Sale No. 53-A entirely, my unit price for Zone A would have been the same. In my investigation of Sale No. 53-A I read the testimony of Mr. J. O. Barkley given in May 1925, in Finance Docket No. 3906, Excess Income, St. Joseph Belt Railway Company. I read the testimony and considered it to be the statement of facts as made by Mr. Barkley. I had no reason to believe that Mr. Barkley had not told the truth about the matter. I felt that in the light of my picking up previously of the minutes of the Board of Directors of Swift and Company incident to the transfer of the property, that I got further information on it, and when I got this statement from Mr. Phalp about it, it

clinched my idea of the fact that the tract was not a normal [fol. 1231] transaction. Mr. Barkley stated substantially that this land had originally been transferred to Swift and Company by the stockyards at a very nominal price, with the expectation on the part of the Stock Yards Company that Swift and Company would extend its facilities to use it, and that Swift and Company (T. 1190) decided not to use it and wanted the Stock Yards Company to take it back at what the actual carrying charges had been in the interim. As I understand it from this testimony, the Stock Yards Company did take it back. Mr. Barkley stated: "It was not a straight purchase of property under ordinary normal conditions because we had formerly owned it and transferred it to them at a nominal figure for packing house purposes. In fact, we gave them considerable of the property they occupied in order to get them to expand their facilities and make our stockyards more attractive, thereby increasing the value of the yards and its importance." I did not hear Mr. Barkley make those statements. I know nothing more about it than anybody else who would read that document (T. 1191). As a part of my investigation I had sales that were used in the last hearing of the recapture case involving the St. Joseph Belt Railway Company. That was a group of 53 transactions. I understood that they agreed to use these 53 transfers, but there were other transfers (T. 1193) which included this Transfer No. 53-A. At the time I first picked it up I didn't know they had excluded it because of facts substantially as stated by Mr. Barkley, but found that out subsequently. I first got from the Interstate Commerce Commission photostat copies of the agreed sales. Subsequently I discovered that some of the disagreements arose, in part, out of the treatment of the improvements on the sales, and I asked them to mail me also what they called the discards, and, in the interven- [fol. 1232] ing time, I had picked up this transfer, and, subsequent to picking up this transfer, I got hold of the discards and 53-A was in those (T. 1195). I only know the purpose of the resolution on pages 102, 103, and 104 of Government Exhibit No. 128 as I can interpret it from the copy of the resolution. I would state that the purpose was to get the authority of the company to get the property released from under the mortgage. I have no further information other than is shown in the copy of the resolu-

tion (T. 1196). I haven't seen the Swift and Company indenture, but I do know it is a practice to write into the trust indenture the requirements that before any of the property classified as part of the general mortgage can be transferred, that the Directors will take appropriate action to notify the trustees of the circumstances under which the transfer is being made, and very often there is a provision that the proceeds from the transfer will be deposited with the trustee under the mortgage to protect the interest of the bondholders. Either that or additional property is pledged. I assumed that this was the purpose for which the resolution was made.

Famo Feed Milling Company Sales

Sales 34, 35, 38, 39, 40, and 41 represent the acquisition by the Famo Feed Milling Company of its tracts. In considering them, I gave no weight to the analysis of the purchases contained on the bottom of Sales Sheet 40 (T. 1197). I considered it but did not give it any weight except that I considered the $621 spent for fill in the effect that it had on the transfers themselves. I gave no weight to the appraisal of the combined tract (T. 1198). I investigated the statement on Sales Sheet No. 34 reading "This land was swampy and had to be filled." I understand that is a correct statement. The tract as filled when I saw it last is perhaps 1½ to 2 feet above the land to the east of it and [fol. 1233] a matter of 3½ feet below the Rock Island right-of-way. The Rock Island right-of-way is substantially the same grade as Cherokee Street and Illinois Avenue at the intersections of the street. The Rock Island right-of-way at the point immediately abutting the sale, that is, the lands of the Rock Island right-of-way are at the same grade as the sale, because the lands of both the right-of-way and the sale have been filled at the same time, but the main line of the Rock Island, the main line track is the one which is about 3 to 3½ feet above the present level of the sale and also above the present level of that portion of the Rock Island right-of-way which lies between its main track and the western boundary of the sale. The main line of the Rock Island at the nearest point to Sale 34 is substantially on the same level as the main line of the Rock Island at Cherokee and Illinois Avenue, which streets are at approximately the same level as the Rock Island track. That por-

tion of the Famo Feed Mills tract which fronts on Cherokee Street is substantially 3 to 3½ feet higher than Sale No. 34 as I saw it. There had been some filling already done on Sale No. 34 when I saw it. To a considerable extent the same situation is true in respect to Sale 35, but not so much. Sale 35 is a little higher than 34. The title of the Famo Feed Milling Company describes about as well as I can the type of business it does, handling feeds, and in addition some coal (T. 1200). They manufacture feed and sell it to people who are feeding livestock of various types.

Residential Sales

By the statement on page 22 of Government Exhibit No. 128 reading as follows "For comparative purposes as to an alternate utility, other than industrial, which might be made of the property, the residential sales in St. George's [fol. 1234] Addition and South St. Joseph Town Company's Second and Third Addition, were given study" I mean by that statement that if an investigation of these residential sales had developed the fact that residential values were sufficiently high enough in this territory to overcome the industrial value, that is to say, in seeking the highest utility to which the property could be put and the value for that utility, I sought to determine whether, by any chance, residential values were so high that it might be possible to develop portions of the zone into a residential subdivision, and had I found that such a development were likely to produce a higher value, I would have given that weight. I did not find that and therefore gave no weight to these residential sales (T. 1201).

Sale No. 22

I did not give a great deal of weight to the lease covered by sales sheet 22 in determining the value of the zone as a whole for the reason that it was a small tract devoted to a use which could get along on a limited area, and I felt that that sort of transaction was not a good indicator of value for a large industrial tract such as Zone A. All transactions of that size and which were on property devoted to a special use that I considered wouldn't be a general use for the area under appraisal, I gave proportionately little weight. That piece of property is immediately adjacent to but across the tracks of the St. Joseph Belt Railway

from one end of Zone A in close proximity to the sheep truck-in division. It is closer to Zone A than any of the other transactions I have listed.

Referring to the statement on page 22 of Government Exhibit 128 in reference to the district located south of Atchison Street and west of 11th Street, I did not give [fol. 1235] very much weight to any of the transfers there listed. They would not tend to decrease the value for Zone A which I otherwise would have found. It probably did not affect the value either way but if anything it may have tended to increase it a little bit. Those transfers are a mile and a quarter from Zone A (T. 1202).

Distinct Industrial District

I consider the stockyards district a distinct industrial district. That district is not bounded by the St. Joseph Belt Railway Company. The stockyards district which I consider to be a distinct industrial district is south from Florence Street and west of Lake Avenue and north of Alabama Street. I consider the milling interests, such as the St. Joseph Public Elevator, Larabee Mills, Grain Belt Mills, are a part of the industrial district known as the stockyards district. I do not consider that the Famo Feed Milling Company is a part of the industrial district but of the stockyards district. By the stockyards district I mean the area which is largely under the influence of the stockyards activity and it does not mean the stockyards activity alone (T. 1203). In the definition which I gave of the distinct industrial district I went over to Lake Avenue which would include the tract occupied by the Famo Feed Milling Company, the retail district at the entrance to the stockyards on Illinois Avenue, the Missouri Serum Company and the Ehrlich Manufacturing Company.

Recession in Values

Referring to the statement on page 16, "The extent to which the recession is present in each zone from these earlier levels varies and will be commented upon in the [fol. 1236] analysis of some of the supporting data in the zone discussions," I did not discuss that recession in connection with Zone A, but in some of the sales supporting, where it appeared that the transaction was a foreclosure or a distress sale, I mentioned it. That is what I mean by

that statement, that, in discussing, in looking at the sales data, where the supporting data showed that it was a transfer which was the effect of the depression, mention is made of the fact that it was a distress sale (T. 1204). In the transfers listed on page 22 and referred to by number, I probably do not have any comments in that respect but I mean by that, those sales of residential property particularly that I considered and didn't give weight, that you will find on those, that from time to time they were indicated as distress sales and for that reason I did not consider them indicators of value, even of that particular utility. The statement referred to does not apply to any of the transfers which I have listed by number on page 22.

Sale No. 54

I gave some weight to sale 54. I gave some weight to the original lease part of sale 54. I did not give any weight to the later lease of January 1, 1929 (T. 1205). At the time of the sale of the right-of-way to the Belt, it was paying rental on the basis of the later lease of January 1, 1929, which figures approximately 30 cents a square foot. I did not know how the valuation in that later lease was fixed. On direct examination I gave my rule as to the weight that should be given to transactions between a parent and a subsidiary corporation in connection with real estate which is on page 1017 of the transcript.

[fol. 1237] City Property

Sales 43 to 50, inclusive, represent city property on Illinois Avenue and Cherokee Street. I gave these transfers very little weight in arriving at the composite value of Zone A, but I did consider them and for a while weighted what effect they might have on a part of Zone A if I were sub-zoning it (T. 1206). That would be the part that fronts on Illinois Avenue, extended across the tracks (T. 1207). I discarded that idea. As I discarded it I did not completely discard giving weight to these transfers because I felt they deserved a little weight at least in considering the possibilities of the land, in the event the stockyards operations were not on it. I do not believe I could say how much it tended to increase my unit value for Zone A. I think it tended to increase it a slight amount. The tracts covered

by sales 43 to 50, inclusive, do not have railroad trackage and probably could not get it except at an inordinate expense. The desirability for retail use makes the values on Cherokee Street and Illinois Avenue (T. 1208). The stockyards and packing houses have something to do with it. I would say (the existence of the packing houses and the stockyards are responsible for a large portion of it. It might be that there would be some retail developments there of a minor nature, even though the stockyards and packing houses were not there, but I think that the principal reason for the existence of the retail business is on account of the existence of the stockyards and packing houses. I learned that formerly the Exchange Building was down at the Missouri Avenue entrance to the stockyards and I know what happened to that section of the city when the Exchange Building was moved to Illinois Avenue. I understand there was quite a flourishing retail section on Missouri Avenue at the time the Exchange Building was [fol. 1238] down there. When the Exchange Building was moved that activity largely dissipated and moved down onto Cherokee and Illinois Avenue (T. 1209).

Missouri Serum Company Sales

Sales 32 and 33 represent the acquisition by the Missouri Serum Company, 33 being the first acquisition and 32 a later acquisition of an adjoining piece. On page 22 of Government Exhibit 128 when I mentioned 33-X, I mean sales 32 and 33. Neither of these tracts have trackage. A serum plant is located thereon manufacturing serums for livestock. I would assume it was serum like the Anchor Serum Company only on a smaller scale (T. 1210). The Missouri Serum Company tract does not possess the elements of plottage and assembly. I think the Famo Feed Milling Company tract does. I would say it possesses that element to a greater extent than Zone A, for that size of tract. We are comparing tracts of great divergence in size, but proportionately for the size of the tract, I would say that the Famo Mills sales tract possesses the element of plottage to a greater extent than the stockyards tract in Zone A. I did not give the Famo Feed Milling Company sales a great deal of weight in valuing Zone A. I perhaps gave even less weight to the Missouri Serum Company sales.

Sale No. 55—Sale of Right of Way of Belt Railway

I did not give any weight to sale 55 (T. 1211). Morton O. Cooper mentioned on page 113 is one of the counsel here in the case for the Department. He made the investigation reported on pages 112 and 113. In connection with this sale I learned that the Bureau of Internal Revenue accepted [fol. 1239] the Stock Yards Company's statement that it had received $1,020,499.05 for the land it sold the St. Joseph Belt (T. 1212). From reading the memorandum I would take it that the sole difference between the Bureau of Internal Revenue and the Stock Yards Company was the value of the land, capital stock, surplus, etc. as of March 1, 1913. As far as I can see that was the sole subject of the compromise. Had I considered sale 55 to be what I call a normal bona fide transaction, I would have arrived at a somewhat greater unit value for Zone A. That would also apply to any other zones which are adjacent to the property conveyed to the St. Joseph Belt (T. 1213). The land comprising the right-of-way of the St. Joseph Belt Railway Company is not exactly similar land to Zone A but is adjacent. That portion of it which goes along the east side of respondent's Zone A is used directly in connection with stockyard business. By saying it is not similar, I mean not similar in use and not similar in shape. These are the two principal respects in which the two tracts are dissimilar. When I state the shape was different I referred to the entire tract rather than the portion which abuts Zone A to the east. The shape of the portion of the tract which abuts Zone A on the east is not so dissimilar as the entire tract would be (T. 1214). Its length is equal to the length of Zone A and the only difference is in the width. The contract appearing on pages 110 and 111 had some but only slight bearing upon my determination that no weight should be given to sale 55. It was my understanding that the loading and unloading of livestock was performed by the Stock Yards Company itself for the St. Joseph Belt Railway Company which was under obligation to load and unload livestock (T. 1215). I knew that it was the obligation of the entire group of carriers to perform the service but on which one of them the particular [fol. 1240] duty of loading and unloading would be assigned was a matter amongst themselves and usually the terminal carriers are the ones that perform the loading and unload-

ing. That is true at Omaha and in practically all kinds of traffic the originating carrier, of course, performs the loading and the carrier which moves the commodity to the destination is obligated to provide unloading facilities. At public stockyards the loading and unloading is generally performed by the stockyards company. I do not know in each instance if the compensation for that work and for the use of the facilities is paid by the line haul carriers. I know that the St. Joseph Belt does not have to pay one penny toward the amount which the St. Joseph Stock Yards receives for loading and unloading livestock and for the use of the facilities (T. 1216). I did not know who paid the Stock Yards Company for the use of the facilities, but I knew that the line haul carriers paid it for the loading and unloading. I do not know whether that compensation includes the use of facilities but assume that it did.

Zone A

Referring to my statement on page 1028 that my value was an average value, if I had eliminated the vacant portion of Zone A south of the hog truck division, that portion would have carried a somewhat lower unit price than the average. If I had zoned it so that that tract were an individual zone I think I would have placed a little bit less than $5000 on that tract (T. 1218). That would have the effect of increasing the average unit price to a limited extent of the balance of the tract. The same thing would be true with respect to the unimproved tract in the northwesterly corner of Zone A.

In considering the value of Zone A I knew that the wholesale meat district for St. Joseph is now substantially all across the street from Zone A and gave that consideration [fol. 1241] It tended to slightly increase the value of Zone A. I do not know how long it has been there. I would be willing to accept your statement that it came there since the prior hearing. I do not know myself. I know that the wholesale meat business of both Swift and Armour was not always where it is today (T. 1219). I think it is correct that at the time of the prior hearing it was in the downtown wholesale district of St. Joseph and that it has not been at the yards over a year.

The statement on page 1015 of the transcript about the weight I gave the residential properties is substantially the

same as what I stated about St. George's Addition and other residential transfers where we used them merely to see if residential values would be higher.

Consideration of Present Use of Respondent's Land

In reaching my finding of value I did not consider the present use of Zone A in so far as I was able to divorce myself from that consideration. I did consider the availability of that land to that use. The difference is that if I considered the actual use as is now being made, the values would not necessarily be the same as if the similar use were being made under different arrangements (T. 1220). The reason for that is that if the improvements which are on the property presently were stripped off of the land and a new stockyards development was placed upon the land, it might be that the arrangements for handling the business would be different than they are as at present conducted, and that that would have and could have an effect on the value of the abutting properties, and, to the extent that it would have an effect on the value of the abutting properties, I do not consider that the present use being actually made of the area in question should be given any weight in a find- [fol. 1242] ing of value. The distinction I make between present use and availability for use is that perhaps if the structures were removed and then rebuilt, they might not be rebuilt in the same place. That is not the sole distinction. The other distinction is that if the present structures and improvements were stripped off the property and the lands were still available for stockyard use, as I considered them to be, it is conceivable that there would be some urge to place the stockyard improvement on even other locations than where it exists, outside of the Belt limits even, if the cost of a new development, when you consider the difference in the values of the lands, would economically warrant your moving the present stockyard location outside of the ring of the Belt and constructing an addition,—even to the extent of constructing additional trackage facilities in other locations (T. 1221).

Those are the two distinctions between present use as a stockyards and availability for use as a stockyards. If the stockyards were stripped and then rebuilt there might be influences brought to bear from the packers to get different arrangements than are now there for the handling of live-

stock which might cause the stockyards to be rebuilt differently. I had in mind that if the packing plants were in existence and the stockyards were not the packers would insist on some sort of an arrangement whereby they could get into their sites without any restriction from the owners of the area in Zone A. That is the only thing I can point out off-hand (T. 1222). I have made a conscientious study of this question and considered that point. I cannot point out any other change that I think would be made, but I have a feeling that the situation exists down at the stockyards area, as it does everywhere else, you never quite build a facility or industry to suit you exactly the way you would like to have it. You always make some mistakes that you [fol. 1243] would correct, if you would build it over, and I imagine those would be corrected, if there are any, in the event the plant were rebuilt, and that might have an effect on values of the abutting properties. Changes of that type would probably be minor. In connection with my valuation of stockyards, I have not made any study as to what is a good arrangement of the stockyards in connection with receipts by rail and truck, sale of said receipts, and movement to packing houses except in so far as my limited observation about stockyards operation would enable me to think upon the problem. I am really not qualified to talk about the operations within the yards (T. 1223). The present operation whereby the livestock that comes in by rail comes in on the east and moves through the yard to the packing plants on the west appears to me to be a logical and systematic arrangement. I have nothing I could point out which would illustrate an uneconomic or inefficient construction at the present time. There might be a more efficient reproduction of the stockyards. I do not have in mind that there would be because I don't know. I believe if it were reproduced it would be reproduced as efficiently as possible and if any improvements were possible I think the management would take steps to put them in.

As to my second point that if we reproduced the stockyards might be moved to other areas, I do not know whether that is probable. I think the present situation is the one which would probably be used (T. 1224), but I do feel that in the event the stockyards were reproduced and the cost of reproduction were mounting into high figures, some consideration might be given by a prudent management to where

it might be reproduced more economically, if such a thing were possible, and with large areas of land existing down here in other zones within the ring of the Belt, it is con- [fol. 1244] ceivable to me that some such arrangement might be worked out. As a practical proposition as far as my observation goes, I would not expect the stockyards to be built on Zone F in preference to Zone A, or, at least, in preference to Zones A and B, considered together. I do not feel that there would be any building of stockyards on any of the other zones in preference to Zones A and B, but what I can visualize is an opportunity to save on the investment by building in an alternate location, and that I would feel a study of that kind should be made, on reproduction, to see whether or not it would be possible to reproduce more economically in another location (T. 1225). I have a feeling that we would ultimately get down to the point that it should be built where it now is, but I think consideration should be given to building it at another nearby location (T. 1226). I think that construction would tend to decrease the value of Zone A because I think that were the yards not existent, a closer study would be made of the relative values and cost of reproducing the facilities and where there is a great deal of vacant area outlying, such as there is in the vicinity of the yards, I think that the conclusion would be reached that the lands themselves could not be considered to be so valuable where there is other land that might be available for the same use, as if there were not. In other words, if Zones A and B, for example, had an absolute monopoly of where the location could be, that is, a monopoly to the extent that it was just impossible to put the yards anywhere else, why, then, I think there would be no question but if you had a yard at all that is where it would go. On the other hand, where you have these additional large areas near by, I think that prudence would dictate that you should consider the alternatives. I would not say that Zones A and B have a monopoly of the real honest-to-goodness stockyards location [fol. 1245] in that district, but I say they certainly have a very substantial advantage over any other of the areas that are within the vicinity of the packing houses. The construction of the stockyards to the exclusion of Zones A and B is conjectural but it is one of the elements that I think should be considered (T. 1227). If that is not a proper ele-

ment my answer is wrong. In all these conjectures, to the extent that it is possible to enter such a realm of speculation, I consider that the packing houses and the railroads would remain exactly as they are. I agree that the entire theory of land value, based on the Minnesota Rate Cases, involves a conjecture of what the effect on the land would be if the particular facility you are valuing were not there. That is my idea of what the Minnesota Rate Cases hold. The series of Statements I have just made explain what I mean by the existing vacant land adjacent to Zone A, depressing the value of Zone A. That question takes into consideration the suitability of that vacant land for stockyard use (T. 1228). It takes into consideration that these other outlying areas suffer manifest disabilities for that particular use compared to Zones A and B. Presently their use depends upon use in connection with Zones A and B, but if the present plant of the Stock Yards Company were eliminated I do not know that that would hold to the same extent. It would be a conjecture as to whether it would hold.

That would also take into consideration whether or not it would be necessary to fill some of these adjacent vacant lands and the expense of the fill would be an element. I carried that in the back of my head in connection with the study of the topography and I figured that considerable filling in some spots would have to be made, whereas in others very little (T. 1229). Very little would have to be made in Zones C and N. You wouldn't need so much filling [fol. 1246] although you wouldn't get the property at the same level on a tract like J. Operation of a stockyards on a different level from the adjacent packing plants and railroad facilities would be an additional operating hazard if the difference in elevation were material, but there is no such material difference in elevation in these lands. That would be a problem for the people who would construct the yards to consider. I assume that that question was considered at the time the present stockyards were constructed.

Price at Which Respondent's Land Could Be Sold

In my statement on page 1037 of the transcript wherein I referred to the price at which the individual zones could be marketed, I included Zone A. Under present marketing conditions it is my opinion that Zone A by itself could not

be sold as a whole for $5000 an acre (T. 1230). That is due to the depression. I do not know that you would call that a hypothetical question. It is a question that arises out of a consideration as to whether to put valuations on property at the present time that one would judge properties could be sold for in this time of distress. In that statement I assumed that the land in Zone A was stripped of all the improvements that have been inventoried by the engineer for the Department. Under the same circumstances I do not know whether the Stock Yards Company would sell Zone A for $5000 per acre (T. 1231). The fact that under the situation I have assumed that the land could not be sold for the amount for which I have appraised it would have some weight in my mind in arriving at the value of the land because I put a higher value on the land than I felt it could be marketed for under those conditions. My opinion as to the resale of this land at the present time did not tend to lower my opinion of the appraised value of the land. In appraising land of that character, what [fol. 1247] you could actually sell it for, under present conditions, is a factor to be considered. I think it is an element in the normal appraisal of property. Whether it is to be given weight depends upon the individual situation. In this instance I did not give it any weight (T. 1231-A).

Access to Packing Plants

Referring to my statement on page 1222 of the transcript in reference to what the packers would insist upon as to access to their plants in the event of a reconstruction of the yards, I presume that any of the disabilities which the packers feel they now suffer would be corrected. If the stockyards plant were not in existence and constructed the packers would be in a position to attempt to make arrangements for themselves through other means. I am assuming that the packing plants are in their present location. I am not assuming that respondent does not own the land in Zone A (T. 1233). Under such facts the packers would be in a better position to make a different arrangement for the use of Packers Avenue and Illinois Avenue than at the present by seeking to interest other people in building other yards in other locations in the vicinity. They could do that now but with the present arrangements in existence even though they might not be completely satisfactory, the ex-

pense that might have to be incurred to develop an arrangement would be one of the deterrent factors in going ahead with it at the present time. The expense of rearranging might be different if the present stockyards were to be reconstructed because the method of getting stock in from an alternate location would be one of the costs to be considered as against stripping the present facilities and bringing the stock in as it is now brought in (T. 1234). The cost I mentioned would be considered by the packers, among others, and also by the cost of getting the livestock in in [fol. 1248] so far as the constructor of an alternate yard would be concerned. As to the expense of stripping the yard, if in stripping the yard you strip some of the present facilities for moving stock into the packing plants, but to the extent that those facilities are provided by the Stock Yards Company itself, I assume that from an alternate location the packers could work out a similar arrangement for moving the stock over to their plants at the expense of the contractor of an alternate stockyards (T. 1235). As an expense to the packer, I don't know whether it would be different at the present time without any reconstruction or tomorrow with reconstruction. He might have to rearrange some of his facilities incident to bringing the livestock in from another location. He might have to do that whether the present stockyards is there or not. If he uses another stockyards other than the present one he would have to make some rearrangement today assuming the stockyards is in existence, or tomorrow, assuming it is not in existence. I feel that these packers are interested very much in direct buying, and, in reconstruction of the yards, they might go to some length to do business with the yard from which they could get their stock and be able to get some satisfaction as to buying direct. I think they might attempt to negotiate the same thing now (T. 1236). I do not think the threat of direct buying is the same today as it would be if the stockyards were magically wiped out because with Packers Avenue and Illinois Avenue in control of the Stock Yards Company livestock cannot be moved in by truck. If the Stock Yards Company still owns the land that situation would change through the possibility of getting people to use these alternate locations for a stockyards. Such people might come into the plants of the pack- [fol. 1249] ers from the alternate locations by negotiating for the purchase of some of the existing properties in the

vicinity that are not owned by respondent. I think they could get into the plants other than by land owned by respondent by crossing over some of the lands owned by the railroad companies (T. 1237). I think generally they might have to cross lands of respondent or there may be some way there they could work out an arrangement, for instance, in the location west of Zones K and J, a corner of which comes down to Lake Road. Assuming that there was a yard built in the so-called Fowler tract, the corner is next to two public thoroughfares and the right-of-way of the Union Terminal. A viaduct across that corner and across lands of the Union Terminal and the St. Joseph Belt might reach the packers. I recognize the disability of building a viaduct across the railroad tracks. I do not know to what extent it would necessitate the rearranging of plants of both Swift & Company and Armour & Company (T. 1238). I am speaking, of course, of the influence which acts as a limiting factor on how far a man, or a group, or a company, who feel they have a monopoly can go when they are making a business arrangement. If the proposition would become too burdensome, I can see where the industries affected would seek another way out, and while I am not aware of the expenses of making such an arrangement, I see where it would have to be given consideration, and it might affect the value. If it were not a practical matter it would not be given much consideration and would not be much of a threat. I think the building of a stockyards on the Fowler tract is a possible proposition. I do not know how practical because I am not a stockyards man. I would not say it is practical, I do not know. Of course to the extent that it is practical it would have a bearing on the importance of the threat. I do not know directly whether [fol. 1250] the packers are satisfied at the present time with their methods of ingress and egress (T. 1239). At other yards at which I have worked there is access from public thoroughfares into the packing plants, with the exception of access into Cudahy's plant at Omaha which is in part over a strip owned by the stockyards company, but Swift and Dold and Armour at Omaha have access from public streets and Swift, Armour and Cudahy have access from public streets at Sioux City. I have been at St. Paul. I know the situation there well enough but I did not make a study of the access to the packing plants when I was there. I do not know the situation at Denver and only in a general

way at Chicago. At Chicago the stockyards company owns the streets. I do not know the situation at Fort Worth (T. 1240), nor in detail at East St. Louis National Stock Yards. I have looked at the Kansas City stockyards but could not state as to the ownership of the streets. If as a practical matter the ownership of streets by stockyards companies exists at a substantial number of large public stockyards that would not have a material bearing on the situation because the general situation of which I spoke, the direct buying, may not be worked effectively at the individual yard.

From the point of view of direct buying it is a pretty good thing for the stockyards company to own its streets. For the specific use that is being made of the property it is an element of value that the stockyards company itself own these streets. As a general proposition the threat of direct buying is important right now (T. 1241). I have discussed direct buying at pretty great length with people in the Department as to its history, how it has grown and the general extent of it, and I have read about it in the reports of the Interstate Commerce Commission in the live-[fol. 1251] stock rate cases and things of that kind. That is the source of my information. I have no direct practical knowledge. In my opinion one of the important weapons that the St. Joseph Stock Yards holds to ward off the threat of direct buying is the ownership of Packers and Illinois Avenues within the stockyards. I have no instance in mind when the ownership and control of those two streets within the St. Joseph stockyards has worked to the detriment of the packers.

Relation of Unit Values of Individual Zones

In the valuation of my various zones I did not start with one zone. I fixed a group first, considering all of the zones within the ring of the belt at one time (T. 1241). That is Zones A, B, E and D. I could not state which one of these four I valued first. I just considered them as a group in a group picture, weighing their relative worth and fixed all four of them substantially at one impulse, having considered all the data that affected them. I would not state that I fixed the value of Zone A first. I think the value of Zone A within the ring of the belt was probably the most important thing I was considering at the time I

was debating about the relative worth of the four zones within the belt. The values I fixed for Zones A, B, D and E had an influence on the value I fixed for Zone C, but not materially for Zone F, only to the extent that Zone F was nearby. I considered the transfers I mentioned in connection with Zone A in considering the values on all zones within the ring, and in the same manner. I had them in mind when I was trying to reach a conclusion as to value (T. 1243). To a large extent I also considered the same transfers in fixing the value of Zone C (T. 1244). In valuing Zone C I considered the data and also considered the values I had placed on the zones within the ring, but which weighed more with me I could not state (T. 1245). The [fol. 1252] values I had previously fixed on Zones A, B, D and E probably weighed equally as much as a reconsideration of the entire data in arriving at the value of Zone C. I never stopped considering data at any time; it was in my mind all the time. I could not tell where I left off considering. If there was any duplication in considering data I guess I did plenty of it because I had that in my mind all the time in so far as I could keep it there.

In arriving at the value of Zone E as compared to Zone A, I did not take into consideration the present use of those two tracts. I did take into consideration what I call availability of those two tracts for stockyards use. That likewise applies to Zones B and C as compared to Zone A (T. 1246). Zones B, C, D and E are not used as intensively as A, and I do not know, of course, exactly what stockyard purposes are. On some of these lands there is apparently feeding of livestock and whether that is done as a stockyard facility or as an incident by some one else, I do not know as I am not familiar enough with what the real stockyard use might be considered. In other words if it is a stockyard use it is an incidental use, but the use is not as intensive as in Zone A. In that connection I learned that there were tariffs published for feeding of livestock at certain of the points. I understood that the packers were feeding the stock, but whether that is covered in the tariff I do not know. I am not familiar with the application of those tariffs, so I would not say. As a practical matter Zone A is more available for stockyard purposes than either Zones B, C, D or E (T. 1247). I would not say that it is much more available. I said in connection with the availability of use of Zones B,

C, D and E that they were principally or practically available in connection with Zone A.

The statement on page 24 that Armour and Company's holding pens are in Zone B, I got from discussion with [fol. 1253] people at the yards, possibly Mr. Plumb, although I would not state definitely (T. 1248). I do not know definitely whether part of those pens are in Zone B. I have seen stock in there, and it is fenced off, but to what extent it is Armour's and to what extent it might be others, I do not know (T. 1249).

Redirect examination:

Value of Certain Portions of Various Zones

Referring to page 1 of proposed Government Exhibit No. 128 upon which I set out the respective values I placed on respective zones of respondent's land, I considered all the factors favorable to respondent's land, and all the factors unfavorable to the various sales or transfers shown on Government Exhibit No. 128, which, on cross-examination, I have said that I knew to be true, or assumed to be true, and having so considered all these things, together with all other pertinent factors, giving all facts the weight to which they were entitled, I arrived at the value shown on page 1 of proposed Government Exhibit No. 128 as the result of my judgment so formed (T. 1251). Referring to the vacant land in the southwesterly portion of Zone A, if that land were segregated from the remainder of the zone for valuation purposes, that is, if that had been zoned separately, I would place on that separate portion of the zone, a value of approximately $4,000 per acre. That part of Packers Avenue which lies directly opposite and abutting that vacant land, if I had segregated that as a valuation zone, I would have placed upon it the same unit value, that is, $4,000 per acre (T. 1252).

Assuming that the following areas had been zoned separately for valuation purposes, I would have given the unit values on them as follows: on the land on which is located [fol. 1254] the six pens in the southwesterly part of Zone A, $4,000 per acre; on the portion of Packers Avenue immediately west and adjoining the six-pen area and on the portion of Packers Avenue south of that portion, $4,000

per acre; on the strip of land lying between a tract of land designated as the Hammond Packing Company and a tract designated as Nelson Morris and Company, $4,000 an acre; on Illinois Avenue west of Packers Avenue, $4,500 per acre; on the unimproved tract of land lying in the northwesterly portion of Zone A, which is largely vacant (T. 1253) $4,500 per acre; on that part of Packers Avenue in Zone A, lying north of Illinois Avenue, $4,500 per acre (T. 1254), and would place the same unit value on the extension of Packers Avenue across Zone C to Lake Road (T. 1255). I would not delineate these tracts into sub-zones for valuation purposes for the reason that in considering zones of this kind of property I did not give any consideration to a method of that kind. These sub-zones from the very nature of their description do not lend themselves to a regular zone of value. In other words, the lines of demarcation are not such as I would make in sub-zoning a tract to express distinctions in value. On the small tract of land which is used for the purpose of manure disposal, which is a small portion of Zone N outlined in red, with the remainder outlined in yellow, and referred to previously in the hearing as "red N," I would place a valuation of about $4,000 per acre (T. 1256). The reason why I have placed a valuation of $4,500 per acre on that part of Zone C which is occupied by Packers Avenue, and $4,000 per acre on the zone as a whole, I stated that I would not zone the property the way you have asked the question, but giving, in my own way, on short notice, as to the relative worth of that narrow strip which has public street frontage on one end, and trackage on the other, its depth and size might make it salable in my opinion at [fol. 1255] slightly better than the average for the zone because of its small size there in one piece. The same considerations apply to the higher value which I place on what is designated as "red N" as compared with Zone N as a whole. As to whether a small piece of land, other things being equal, would command a higher unit price than a large piece, an individual piece might do that and very often does, but it depends on the nature of the property and the character of the utility that is to be made of it. As a general rule I would not state that the rule is general, but it often happens that way. It depends on the utility for which the land is being used.

Famo Feed Milling Company Sales

Sales Nos. 34, 35, 38, 41, 39 and 40, which are designated on Supplement Map 3 of Government Exhibit No. 128, constitute the Famo Mills acquisition about which I was questioned on cross-examination (T. 1257). In connection with the Famo Mills transfers I had, of course, already a record about the sale, and I had been over the ground a couple of times prior, but on reading the treatment of the sales in previous valuation proceedings—(T. 1259) I do not wish to depart from anything that was agreed to whatsoever, or elicit any different information from anything that was agreed to on the facts as found. My only purpose in going down to review the ground was to determine supplements to the facts which were already in the agreed statements. The manner of performing some of the work that has been done in the way of value and costs and which were elicited in the sales in prior hearings and to determine where the fill was definitely located, and the other fact which I elicited at the present time was confirmation of record information [fol. 1256] as to the vacation of the streets between the purchases which the owners of the Famo Mills site had the use of. I determined from the owner that the vacation had not cost him anything, he had not paid the city anything, so that, in the treatment of the Famo sale, when question of plottage is discussed, I want to point out that it should be borne in mind that the owners of the property have the use of the vacated streets and alleys. The streets or alleys, or at least portions of what streets or alleys which have been vacated and are now used by the Famo Mills as part of these tracts (T. 1260) are the westerly portion of the east and west alley in Block 20, lying between transaction No. 41 on one side and transactions 39 and 40, the westerly 100 feet of Dakota Avenue, lying between sales 38 and 41, the westerly 125 feet of the east and west alley in Block 18 lying between sales 35 and 38, and the westerly 125 feet of Wyoming Avenue lying between sales 34 and 35. The vacation of those streets and alleys or portions of those streets and alleys caused the various tracts from 34 to 40, inclusive, to become one assembled tract for purposes of use. That gives it a high assembly value with the minimum of cost per unit. I stated on cross-examination, considering the size of the tract, or proportionately at least, I would say that plottage was more important in the group of Famo

Mills sales than in Zone A as an element of value. This site had at the time of purchase a side-track from the (T. 1261) Rock Island which was right against the properties purchased, and the use of that track by the owners is virtually exclusive, and the ingress and egress to the Famo Mills property is aided materially by the use of the portion of the Rock Island right-of-way (T. 1262).

[fol. 1257] Prior Findings of Secretary

As to why I gave no weight to the previous finding of values by the Secretary in this proceeding in the order which has been revoked, one reason was that I wanted to make my own independent study and findings, and the other was that the time which had elapsed in between the two proceedings was sufficient to cause me to believe the conditions had changed materially and that the values would be different.

Accessibility

Zone A as a whole is used intensively. I do not mean that each and every individual portion of it is so used. When I state that the loss of land in a zone to provide accessibility is equivalent to eliminating the value of the streets from the appraisal, I mean that if you had to sacrifice area to provide access that the resulting values, after the access has been provided, would be increased by substantially the value of the streets which have been excluded (T. 1263). The increase in the unit of the net area would be reflected by approximately the value of the area which has been lost, prorated over the area which was served. If land area in a zone has to be eliminated from other uses in order to provide accessibility, it is just as truly excluded from any other use, whether the street be kept private or made public. That is what I meant when I said that it is true in general that ownership and control of streets in a stockyard does not increase the value of the property. If Packers Avenue and Illinois Avenue were public throughfares in the sense that the public generally has the right to use them, which could not be taken away by the Stock Yards Company, I think that would have an effect in increasing the availability of land in Zone A for certain uses (T. 1264). If the streets [fol. 1258] were actually dedicated the land would be available in part at least for some semi-commercial and retail

uses that are now to be found on Illinois Avenue and Cherokee Avenue.

Consideration of Present Use of Respondent's Land

It is my understanding that the Interstate Commerce Commission thinks its rules with respect to land valuation are based on the doctrine of the Minnesota Rate Case. It is my interpretation of the court cases which I have studied that for rate-making purposes it is not proper to consider the earning power of the particular land which is being valued, where the business is subject to investigation (T. 1265). The particular cases that I mentioned, offhand, were the Minnesota Rate Case and the Denver Water Case which were both decided by the United States Supreme Court (T. 1267). The theory is that if you attempt to reflect (T. 1268) the earnings from the site which is under valuation, and is being used for the specific purpose that is being regulated, you get into a vicious circle by reflecting the product of the very rates which you find into the value of the site which is the subject of the inquiry upon which the rates are going to be based.

Railroad Facilities

When I stated that I knew of no other industrial tract in St. Joseph which has equal access to all railroads running out of that city, I referred to Zone A and all of the zones within the ring of the Belt.

Threat of Floods

In particular referring to the statement respecting the water from the Whitehead drainage area at the top of page [fol. 1259] 12 in Government Exhibit No. 128, and to a somewhat similar statement at another place in the exhibit respecting Contrary Creek, I would state that that affected the value I placed on respondent's lands slightly. It was probably somewhat lower, but not materially (T. 1269). There was no substantial difference. If I were to assume from statements made by counsel for respondent, that I was mistaken as to those conditions, I might want to change my valuations slightly, but not substantially. I would want, however, to review the situation in the light of the correct facts. At the time I was studying respondent's land for

the purpose of appraising it and reached my conclusions as to value, especially with respect to Zone A, I was not acquainted with the fact that in the month of May, as a result of a heavy rain, water from one to one and a half feet deep stood for some time in Zone A in front of the Exchange Building (T. 1270). I did not know that as a result of that same rain the bridge across Contrary Creek was washed out and had to be rebuilt. I did not know that every time there is an unusually hard rain, water comes down from the hills east of Zone A and such water and mud is at times deposited on Zone A at Illinois Avenue (T. 1271). I would consider those conditions in the same light as the flood water conditions which I mentioned in Government Exhibit No. 128. Of course, if those conditions were true and cumulative on the type of the information which was adduced by myself and had a tendency to show that the situation was not rare but occasional, the cumulative effect would be greater than just considering one set of circumstances by itself. My conversation with the Assistant City Engineer, G. B. Riddle, led me to believe that the four-foot sewer at Second Street was put down there for the purpose of draining that general area, and he furnished me a map showing the location of the sewer, the general location, and it seemed reasonable to me [fol. 1260] that that is what its purpose was. This morning, I went up to the City Engineer's office again to find out what the facts were about the sewer, and whether Second Street was intended to drain into it, and I was informed by a Mr. Hess, Mr. Riddle not being there, that there was a box culvert from Second Street paving over to a ditch which led to an inlet into the sewer, and he advised me that there are sewer connections down there, and they made recently an investigation with a view to correcting it by putting in a more direct connection into the 48-inch sewer (T. 1272). It would not make any difference in so far as the flood water menace is concerned, whether a sewer had been provided to drain water and ceased to function, or no sewer had ever been provided.

Plottage and Assembly.

The element of assembly value depends upon the use of land by an industry which requires an assembled tract rather than by industries requiring only portions of an assembled

tract. The element of assembly value or plottage is present in a land value when the size of the tract is one which is needed for an industry that can use it in that dimension, that it is necessary for it to have it in that dimension. If an owner of an assembled tract had to disassemble it in order to sell it, it might cause it to lose its assembled value. It would depend upon circumstances.

It is the generally accepted view that the real estate market is stagnant throughout the United States generally (T. 1273). In so far as I was able to determine, the city of St. Joseph and its vicinity is not an exception to that general condition.

[fol. 1261] Sale Nos. 5 and 53-A

Referring to sale Nos. 5 and 53-A, when I said they were both bona fide I meant that they were both actual transfers of title for a consideration, but when I stated that there was some measure of abnormality about it, it has to do with the relation of the parties in part, and also, in so far as sale 5 is concerned, it had to do with the very size of the unit itself being purchased by an already existing industry. When an industry is located on a site and has to purchase adjoining land to add to that site, that places the seller of the adjoining land in a peculiarly advantageous position in the matter of demanding a high price if he is in the position where he controls the direction in which the purchaser can expand. Such purchases generally are made at what are regarded as higher prices than they would be if both parties were entirely free to bargain. There are some instances, of course, where they are made almost on a normal basis (T. 1274).

When I said that sale 5 was very nearly normal I was taking into consideration the narrow width of it and its location with respect to the existing plant of the purchaser. I gave consideration to sale 5 as being a so-called arms-length transaction to the extent that I considered it substantially normal.

Similar Adjacent Land

I do not know whether certain changes in the area of various land zones agreed upon by the engineers connected with this proceeding since the proceeding started involved a change of any zone boundary. If those changes did not

involve any change of zone boundary, but were merely a change of computation of areas within the already established boundaries, such changes would not have any effect upon the unit value. It would have an effect upon the [fol. 1262] total value. It would be a mere matter of mathematical computation (T. 1275).

When I stated that the only strictly similar land to Zone A was within the ring of the Belt Railroad I meant land which is so situated as to access and trackage and general grade or level as to be similar to the zones under valuation. In other words, the only land that is strictly similar from all those standpoints is within the ring of the Belt. By access I mean approach to the area, that is, the entire area within the ring of the Belt from outside highways and from railroad connections (T. 1276). That does not mean that lands outside of the ring of the Belt Railroad are not sufficiently comparable to those within to enable the making of comparisons between the two for the purposes of valuation, if you give consideration to the relative advantages and disadvantages of the respective parcels of land. I gave that consideration.

There is a public street or road abutting on two sides of the Grain Belt Mills site (T. 1277), and that is usable and used daily by the public. The Grain Belt Mills site is 200 feet deep from the public road, and the farthest distance from the road on either side, therefore, would be 200 feet. The most distant part of the Larabee Mills site would be approximately 2,000 feet from the highway or road or street. There is not a publicly dedicated street which touches Zone A on respondent's land at any point. As I explained the sale of the Belt Railroad right-of-way carried with it certain reservations for crossing at Illinois Avenue and the other places where the railroad crosses the street beds which are owned by the Stock Yards Company. Plus those easements you can get to the public street. The public streets which run to the easements across the St. Joseph Belt Railway right-of-way are Illinois Avenue and the projection of it westerly after it is intersected by Cherokee Street (T. 1278), Missouri Ave- [fol. 1263] nue, and Packers Avenue through Zone C to Lake Road. Exchange Street does not directly go to Zone A. You would have to go either by way of Lake Road and around, or else by way of Missouri Avenue. Ex-

change Street runs into Missouri Avenue by way of the Missouri Avenue crossing of the Belt Railway. From the standpoint of accessibility it would not make any difference whether Exchange Street touches the stockyards, or at least the extension of Exchange Street, over the Belt line right-of-way, but not as a public street touches the stockyards Zone A near Missouri Avenue, or near the extension of Missouri Avenue over the Belt line right-of-way runs into that extension of Missouri Avenue. By that I mean that so long as they can get in over the Belt right-of-way (T. 1279) it does not make any difference whether they do it by going down to Missouri Avenue or straight across on a drive. That is just an additional access and the geographical method of getting in would not be so controlling so long as it is possible to get in. It is a fact that respondent has to provide ways to Zone A by reserving easements over the right-of-way of the Belt Railroad. There is access into Zone A from Lake Road by way of Packers Avenue, but that, of course, would involve crossing the Belt Line Railroad at two points which would involve reserving of easements at those points. If you considered the public streets at Illinois and Missouri and even Exchange Avenue and the extension of those public streets by easements over the Belt Line right-of-way as all being public streets, it would still be true that the access to Zone A is by streets that run to a dead end on the boundary of Zone A. It is true that there are no streets, roads, or public ways which run along any part of the boundary of Zone A (T. 1280). It is true, with respect to Packers Avenue, that respondent has to provide a way across its own land [fol. 1264] on the right-of-way of the Belt Line Railroad in order to get from a public street into Zone A. It is true that respondent has to provide streets within the boundary of Zone A to make that zone accessible for the purpose for which it is used (T. 1281).

Grain Belt Mills Sales

I do not regard the lands shown as sales 6, 7 and 8 indicated on supplemental map 3 of Government Exhibit No. 128, as being as valuable as the lands in respondent Zone A. Referring to sale sheet 6, the unit price for that sale is $2,660 per acre, and the unit price of sale 7 is $3,676 per acre (T. 1282); and the unit price of sale 8 is

$5,256 per acre. I considered all three sales together in their relationship upon my valuation as found for Zone A. Sales 6, 7 and 8 include the Grain Belt Mills site. The Grain Belt Mills site proper is covered by 6 and 7, and 7 is a part of what was sale 8. That site has all the railroad and switching facilities it needs. I would not say that Zone A of respondent's land has any more railroad and switching facilities than it needs. It does not follow that both need the same amount. I would think that respondent needs more (T. 1283). I stated that the Grain Belt Mills site might be used for a very small stockyard. That is because of the small size of the tract of land. If it were taken in conjunction with the surrounding land it would be available for a larger stockyard. That is assuming that the present improvements were not on that site, and I am speaking of the land itself. I think the Grain Belt Mills tract is more valuable than Zones J, K, L and M which lie near it. That is because of its better proportionate accessibility, and because of its trackage, whereas Zones J, K, L and M would have only limited accessibility to trackage, in the beginning at least, and topographically the lands in the Grain Belt [fol. 1265] Mills sale are superior to the lands in the zones mentioned (T. 1284).

Topography

When I was cross-examined relative to whether or not the land of Zone A was up to street level, the streets I referred to were Illinois Avenue and Packers Avenue within the area of Zone A. I was not trying to express an opinion whether Zone A is up to the level of Illinois Avenue in the city of St. Joseph. The values I placed on Zone A were on the assumption that the zone is up to the level of those parts of Illinois and Packers Avenues that lie within the zone. There may be little minor places where the zone is not quite up to the level, but taking it as a whole I would say the zone is up to street level and for valuation purposes I considered it as being up to the street level (T. 1285). Relative to the Grain Belt Mill Company providing automobile transportation of its employees, I would think today that they would hardly need to do it, although it may be so. I do not know what they did have to do in pro-

viding transportation in the past. There is a great deal of unemployment today.

Larabee Mills Sales

Sale 13 should be given no weight. It was picked up in connection with the other Larabee sales, and was the financing arrangement that was covered by that transaction. Sales 11, 12, 13 and 14, pages 59 to 62, both inclusive, on each of those sheets there is an entry date. That refers to the date of conveyance. That is the date of the deed (T. 1286). With reference to sales 11 and 14, the Larabee Mills site, in studying and considering and weighing that sale in connection with my valuation, I assumed that the Larabee Mills would have to and did bear [fol. 1266] the expense of providing trackage on its own property at least. I did not know what the fact was. A business having large railroad tonnage very often procures the use of a track where the railroad is in a position to put down a track close by. It often happens that a railroad builds a track on its right-of-way adjacent to an industrial site without any expense to the industry. The business of the Larabee Mills conducted on this land would have a large tonnage (T. 1287). If respondent's Zone A were divided up and sold off in areas similar in size to the area of the Grain Belt Mills Company and the Larabee Mill Company, for use for similar purposes, from observing the method of operation down there I would think that additional trackage would be necessary right on the land of the industry, if in the milling industry. I would think that the site of the Larabee Mills would have possibility for stockyard purposes if it were vacant and taken together with adjoining land. With reference to sales 3 and 4, I do not know whether the tracks were located adjoining that tract at the time the sale took place, but there were tracks close by it as it was a part of the Union Terminal Railroad's holdings.

Sale No. 5

Sale No. 5 does not have any direct legal access to public streets without going over the property of others. In that respect it does not differ from Zone A (T. 1288). I presume that easements are legal access, but in my answer I mean to convey the idea that you cannot get into the

stockyards Zone A without crossing the property of others, but not that you do not have legal access. I realize that the reservations in the conveyance themselves are legal (T. 1289). The owner of tract 5 might acquire an easement over the lands of others just as the owner of Zone A, by the expenditure of money, acquires an easement. I do [fol. 1267] not know of any reason why it could or could not be done.

Zone A

The shape of the Belt Railroad lands renders those lands peculiarly suitable for the railroad company's use. The shape of Zone A has the same bearing on its use (T. 1291). The mere fact of shape alone gives each of these tracts an advantage from the standpoint of value for the specific use to which they are put. In fact, I would not think, on account of shape alone, because Zone A is of one shape and railroad land is of another shape, that Zone A is more valuable or less valuable than the railroad land, but that is a dissimilarity that has to be considered. The lower value which I placed on the vacant area in the southwesterly corner of Zone A was because of its location. The fact that it is vacant did not have any bearing as to value. The same is true as to other vacant lands in Zone A. Local wholesale selling establishments of both Armour and Swift are down in the territory on Packers Avenue now as against having been up town (T. 1292). Those markets are a part of the plants of those packers. I do not know of any other wholesale meat markets adjacent to Zone A. I understand the wholesale meat markets are an incidental operation in connection with the main operation at the packing plants. As far as I know there is not anything about the wholesale marketing of meat at those plants which leads me to believe that there is likely to be a demand for land in that vicinity wherein to locate wholesale meat markets or other wholesale establishments. If there were to be a rearrangement that would encompass the opening of streets in there, that would be one of the things to be considered, and I gave weight to it in finding my [fol. 1268] values (T. 1293).

The stockyard land at Omaha is quite rolling. I heard it stated that the rolling surface permitted not only good drainage but easy cleaning by flushing of those yards. In

the rate proceeding relative to that yard that was urged as an element which increased the value of the land (T. 1294).

Recross-examination:

Appraisal of Land of Respondent

It is approximately correct that I considered all the factors favorable to respondent's land and the unfavorable factors in relation to sales in arriving at the value of all of respondent's land. In doing this it was necessary for me to repeatedly exercise my judgment and form an opinion as to what were favorable factors and what were unfavorable factors. In considering sales it was necessary from time to time for me to exercise my judgment and form an opinion as to the extent to which the tracts covered by those sales were similar or dissimilar to respondent's land. The art of appraisal is not an exact science. Much of it depends upon the judgment of the man making the appraisal. Other things being equal, the better the judgment—the better the job, and the poorer the judgment—the poorer the job. A man with fair judgment and more information might reach just as good a finding as the man with better judgment and less information, or a man with not so good judgment and even more information than a man with the fair judgment (T. 1295). Two men with the same information before them, one having better judgment would naturally reach a more nearly correct answer.

Recession in Values

The following is still my testimony:

"Q. Do you consider that the values in Zone A have re-
[fol. 1269] ceded below normal?

"A. Perhaps to a little extent, not very far.

"Q. And I take it the period for several years prior to 1930 is what you consider the normal period, according to your statement?

"A. Yes." By "perhaps to a little extent" I meant in a small amount. I would not call it very substantial. I could not state any percentage, but it was one of the things that I was weighing and I felt that my finding was less than it would have been if I had made it in the earlier period, but only slightly less (T. 1296).

Grain Belt Mills and Larabee Mills Sales

The Grain Belt tract would not be as adaptable for stockyards use as Zones A, B, E, D or C. I would not say that the Larabee Mills site would be less adaptable to stockyards use than the Grain Belt Mills tract. I stated that the Larabee Mills tract would have possibilities. That expresses its adaptability in the event that Zone A was not so used. I feel with expenditure of money to overcome possibilities, it could be made so usable (T. 1297). How much the expenditure would be is a matter to which I would want to give consideration in determining the relative worth for stockyards use. In considering both the Grain Belt tracts and the Larabee tracts, I considered them as being used in the milling business.

Accessibility

Because the stockyards has access across the right-of-way of the Belt by easement, there is no legal restriction or actual restriction that would hamper ingress and egress except that it is restricted physically by the passage of trains. That fact is no different from the ordinary situation where a public street crosses a railroad track other than the number of tracks (T. 1298).

[fol. 1270] Topography

The situation at Omaha, where the land was quite rolling, was one of the factors I considered in respect to the topography, having observed the method of cleaning the pens up there by flushing, and it appeared to me to be an advantageous way. I did not decrease the value of respondent's land because it is not rolling, but level. I did not consider the element of rolling terrain to be of particular advantage or disadvantage in a stockyards. The question of topography is one that I consider incident to the specific land and its surroundings and whether it has advantages in its particular situation. In other words, there are advantages to level pieces and advantages to rolling pieces, and that is one thing that I would keep in mind. I do not think that the fact that respondent's land is level is a detriment to it as an operator of a public stockyards. With the expenditure of money the Stock Yards Company could make its stockyards rolling if it so desired (T. 1299). I have an idea it could

have been done with less expense, when it was constructed. Generally, most stockyards are pretty level.

Accessibility

The question of use of streets where the man owning the abutting property also owns the street is not similar to the situation where a subdivider buys an entire tract and has to put in streets. The reason is that the subdivider is naturally cutting his streets for the purpose of sale into a specific kind of utility, whereas, in the case of an industrial assemblage, you are working with reverse english, so to speak, in order to blot out streets which are handicaps to a continuous operation. The effect of the use of street area depends largely [fol. 1271] on the character of utility on the property. The fact that respondent owns Illinois Avenue and Packers Avenue eliminates that particular portion of land for use for pens (T. 1300). Because it had to sacrifice that land for streets has some effect upon the balance of the land. The value of the abutting land would be increased had the streets been open, and there would have been a consequent reflection into the values found for Zone A. That is the same situation which exists where a subdivider, either on an industrial or residential tract, sacrifices certain land for streets, but he changes the utility when he does it. In other words, when the subdivider is doing it he is taking the piece of land, usually farm or suburban land, and the sacrifice of area for streets in his subdivision may change it into a different type of utility and make it available for sale and use of a different type of utility (T. 1301). There is no difference between an industrial subdivision and the situation at the stockyards except that some subdivisions may have more streets than at the stockyards. Where a subdivider had provided street access, you would then have a situation that would be more nearly comparable to the one I am trying to visualize within the ring of the Belt here, where a portion of the area of respondent's land is necessary to provide the access which ordinarily would be provided by the industrial subdivider. The same underlying principle does not apply in a subdivision of residential property, because the amount of accessibility that is necessary from streets is far greater proportionately than in industrial areas. The other distinction is that in the subdivided area it is necessary to provide ratably for a greater portion of improve-

ments within the public thoroughfare itself and those, of course, reflect themselves into the value of the lots after the improvement has been put in (T. 1302). In respect to the [fol. 1272] stockyards, I assumed that the lands were stripped of the improvements because of the fact that the improvements themselves are inventoried by the Department's engineer. In the ordinary industrial subdivision such improvements as paving, sidewalks, and sewer and water within the street limits, are provided and available to the industry, but are provided for by the subdivider. If the subdivider is successful, he gets back in the sale of the land the amount he sacrificed in streets and other improvements, plus what he considers a fair additional profit. That is what he attempts to do. That is what I was trying to do when I made my subdivision in Washington. I was trying to get for the land more than the cost of the land plus the land I sacrificed for streets and alleys and plus the expenditures by way of improvements, except I didn't have to sacrifice anything for streets. I was fortunate that they happened to be dedicated when I bought the property (T. 1303). If they had not been dedicated, I would have had to sacrifice them and would have expected to get back, plus a reasonable profit, that sacrifice in each and every sale I made. I have an idea the fact that the streets were already dedicated was reflected in the value of the land when I bought it.

Redirect examination:

Recession Values

I would consider the period prior to the year 1930 nearly normal with respect to land values. That would be true with reference to St. Joseph land and land in the vicinity of St. Joseph. I stated that Zone A had receded only a little in value from normal. The unit value which I have placed on Zone A is close to its value in those normal times (T. 1304). Its distance from it is measured by the little recession that I spoke of.

[fol. 1273] Accessibility

My statement relative to the physical interruption of access to Zone A at the points where these private street or road easements cross the Belt Railroad right-of-way would be due to the running or standing of trains at those points.

Freight trains standing at the point might block the access by the road for varying periods of time. There are very frequently ordinances that limit the time which a crossing may be kept blocked. I do not recall that the easement reserved by the respondent in its conveyance to the Belt Railroad Company contains any such restriction on the Belt Railroad Company (T. 1305).

Recross-examination:

I cannot state that I recall seeing one freight train stand on the tracks of the Belt at any of the crossings where respondent has an easement. All I know is the possibility for it. I considered the possibility of the access being broken that way because I knew that in order to shift on those tracks the trains would certainly have to stop once in a while, even if for limited periods; because there was passage back and forth on the tracks. I considered that stopping of trains on the crossing existed, but I couldn't state that I considered it to any great extent. I considered that trains did stop there, and I presume that in the interest of efficient operation of the two facilities that the time would be shortened as much as possible, but the operating necessitates and, of course, I considered that passage of the trains would hold up ingress and egress periodically (T. 1306). This stopping of trains to which I have referred would hardly decrease the value of respondent's land in Zone A. It was one of the cumulative factors that one con-
[fols. 1274 & 1275] siders, but I wouldn't be able to state that I decreased it on that account alone (T. 1307).

[fol. 1276] Traders and Speculators

H. E. Bufkin, a witness previously called by the Government and sworn, being recalled, testified in substance as follows:

Government Exhibit No. 122-A, entitled "Statement Showing Livestock Shipped by Dealers from the St. Joseph Stock Yards on consignment to other public markets, Years 1932 and 1931", was prepared by me for the purpose of showing the total number of head of livestock shipped by dealers operating on the St. Joseph market to other mar-

kets for sale. I made an investigation of the records of all the dealers on the St. Joseph Stock Yards and obtained this information during the past week from the books of the dealers by an analysis of sales. Government Exhibit No. 122 shows the purchases by dealers during the year 1932. The purchases for the year 1931 is shown by Mr. Christensen's Exhibit, which is Government Exhibit No. 108 (T. 2385). Government Exhibit No. 122-A can be used together with Government Exhibit Nos. 108, 122, and 121-A, to show the numbers of livestock sold in the respective years 1931 and 1932 by the respective traders on the St. Joseph Stock Yards. These exhibits can be used for obtaining the number of head sold for which no yardage was collected. The audit report, which is Government Exhibit No. 121-A, shows the yardage collected on resales, or by the method of elimination we take the four exhibits together [fol. 1277] and arrive at the number of head sold for which no yardage was collected (T. 2386). In order to ascertain the number of head of livestock of the respective species sold by traders or dealers for the year 1932 and for which no yardage was collected, you would have to use Government Exhibits Nos. 121-B and C, as well as the four exhibits I have mentioned. There is an error on Government Exhibit No. 108, page 65-A. I furnished these figures which were to be used in Mr. Christensen's report and in rechecking the figures which shows on page 65-A total purchases of cattle, January 1 to September 30, 1932, firm No. 6, total 6,507 head. The correct figure for the entire year of 1932 should be 5,169. This correction will eliminate the item of 6,507 from that report. I have not the figure for the nine months to be inserted in this, but, as I say, the correct figure of total purchases for the entire year of 1932 should be 5,169. I rechecked the other figures appearing on page 65-A, 65-B and 65-C (T. 2387), and those figures I found to be correct.

Cross-examination:

When I use the term "dealers" on Government Exhibit No. 122-A, I include what are commonly known as traders and speculators (T. 2388). If for the year 1932 it was desired to find out the number of head of livestock resold by dealers as defined by me upon which no second or re-

yardage was paid, you would go to Government Exhibit Nos. 108 and 122 and ascertain the total purchases by dealers for the year 1932. From that sum of purchases you would deduct the figures shown on Government Exhibit No. 122-A and the remainder would indicate the number of animals which were resold on the St. Joseph market by traders. From Government Exhibit Nos. 121-A, B, and C [fol. 1278] the amount and number of head upon which reyardage was actually paid by these dealers for the year 1932 could be determined. By subtracting the number of head upon which the reyardage was paid from the number I had previously ascertained as having been sold on this market, I could determine the number sold on this market upon which no reyardage was paid (T. 2389). The figures shown on Government Exhibit No. 122-A do not represent any resales on the St. Joseph market. They are similar to the purchases made by any other class of purchasers for shipment elsewhere. The persons listed on Government Exhibit No. 122-A are all dealers. They may operate in some other way, in some other line, but these particular names are registered as dealers. In other words, Corrigan and Symon are also order buyers as well as dealers. I took the figures shown on my exhibits from their trading accounts. That is likewise true of E. E. Vance (T. 2390). According to the method I have just given, I find that the number of head upon which no second or reyardage charge was collected for the year 1932 were: cattle and calves, 56,503; hogs, 155,169; and sheep, 1,469 (T. 2391).

The trading account numbers on Government Exhibits Nos. 108 and 122 indicate the following dealers: No. 1, Corrigan and Symon; No. 7, J. K. Perkins; No. 9, Empire Stock Hog Company; No. 10, W. G. Leighty; No. 24, Midland Stock Hog Company (T. 2447).

[fols. 1279 & 1280] Mr. John J. Bachmann, a witness previously called by the Government and sworn, being recalled, testified in substance as follows:

[fol. 1281] Depreciation Reserve

With reference to questions asked me on cross-examination relative to the computation of the sinking fund depre-

ciation reserve and the matter of taxes on the income from that reserve, I stated that there was, or would be, a decrease of 60 or 70 per cent in the total amount provided for under the sinking-fund method, and when I say total I include the annual installment that is set aside by way of principal plus interest (T. 1320). However, the taxes being applied against the income which is to be earned [fol. 1282] would decrease only that income to the extent of 60 to 70 per cent and would in no way affect the installment or principal set aside periodically. The personal property taxes are paid on the basis of the personal property as of June 1 of any particular year. I investigated this matter in the office of the County and City Assessor and found that they used the same base approximately, that is, the same time and the same value, except that respondent does not pay to the city personal property taxes on such personal property not included within the city limits. However, the amount which the company paid on personal property within the city is shown on Government Exhibit No. 121-A, and I believe it has been previously stated in the record. For the county and state the amount which was actually paid was $344.81 (T. 1321). That is the amount for 1931, shown on Statement No. 9, page 370. For 1932 the state and county taxes for personal property are shown on page 361, the total amount is $246.65, made up of the amounts, $8.08 and $238.57. The taxes for 1932, as I understand the County Assessor, are based on the value of the personal property as of June 1, 1931. The balance sheet of the company as of June 1, 1931, shows personal property in the amount of $465,471.11, which amount is possibly subject to an adjustment for the deferred assets, which total $46,186.24. In my opinion that item should not be included, being in the nature of a deferred expense item. With that item out the tax that should be paid, if it is assessed and paid on the full amount of personal property, would be about $8,500. That is at the rate of $2.02 per hundred. I might mention this, which was brought out in my investigation. There is a practical situation which the assessor has to meet which he mentioned to me and that is this. The tax rate for both the city and the county on personal property (T. 1322), if enforced and paid for the [fol. 1283] amount of it, on the full and true value of all personal property, would drive out all savings accounts

from the state. The example which was cited is that a savings account at banks at the present time draws about 3 per cent interest. If the tax were paid as the rates indicate, $1.25 for the city and $2.02 for the county, every individual who has a savings account paying 3 per cent interest would be penalized to the extent of 27 cents for every hundred dollars which he has in such savings account.

The Stock Yards Company, itself, would be penalized on its loan to Swift and Company on which it has received three and four per cent interest. In other words, it would be impossible for these companies to keep this money in the State of Missouri.

To meet this practical situation, the assessor permits individuals and companies to submit their own statement, without further verification on his part. And the tax is based on that statement.

As far as I know, respondent does not pay city personal property taxes on such assets as would result from the investment of its depreciation reserves in securities (T. 1323).

The following balance sheet constitutes the detail supporting my conclusions as to the personal property taxes, omitting the irrelevant portion which relates only to real property taxes:

[fol. 1284]

St. Joseph Stock Yards Company, Balance Sheet, June 1, 1931

Assets:			
Cash on hand		$75.00	
Cash in bank		36,506.99	
Accounts Receivable		17,032.55	
Notes Receivable		6,828.71	
Inventories		19,298.54	
Deferred		46,186.24	
Investments in other Co.'s		12,935.00	
Bond Redemption Fund		49,500.00	
Loans		260,000.00	
Equipment Less Reserve for Depreciation	83,587.00	17,108.08	
(T. 1324).			$465,471.11

I have prepared an adjusted statement for the year 1932 in form comparable to the adjusted statement for the year 1931, as it appears in Government Exhibit No. 124 (T. 1325).

Recross-examination:

Income for Rate-Making Purposes

The following is the table I have prepared for the year 1932 comparable to the items listed on pages 2, 3 and 4 of Government Exhibit No. 124.

[fol. 1285] St. Joseph Stock Yards Co.

Income 1932

	Total	Additions	Include	Exclude
Yardage Received	$415,699.86		$415,699.86	
Gross Hay Sales	63,260.86		63,260.86	
Gross Corn Sales	84,241.54		84,241.54	
Gross Oat Sales	759.74		759.74	
Gross Bedding Sales	7,281.02		7,281.02	
Gross Milled Feed Sales	8,579.54		8,579.54	
Hog Pen Bedding	2,323.95		2,323.95	
Milling Feed Revenue	5,816.04		5,816.04	
Loading & Unloading	19,592.25		19,592.25	
Exch. Bldg.—Office Rents	38,714.50		38,714.50	
Exch. Bldg.—Garage Rents	2,705.73		2,705.73	
Exch. Bldg.—Misc. Revenue	93.53		93.53	
Weighing Cars	3,141.73		3,141.73	
Stock Car Service	52.00		52.00	
Cleaning, Sanding & Disinfecting	82.65		82.65	
Manure Sales	40.01		40.01	
Car Partitions, etc	111.40		111.40	
Immunization Plant	1,649.50		1,649.50	
Truck Washing	733.25		733.25	
Yard Truck Revenue	.....		.....	
Tractor and Trailer	5.00		5.00	
Company Barn	.....		.....	
Estrays	161.89		161.89	
Miscellaneous Income	133.68		133.68	
Yard Leases & Rentals	1,820.18		1,720.22	99.96
Shoes (Employees) Sold	.....		.....	
Feeding Facility Yardage	3,320.75			3,320.75
Rental Feeding Facilities	690.00			690.00
Rent—Tracks & Right-of-Way	.....		.....	
Rent—O. S. R. E. Industries	270.00			270.00
Rent—O. S. S. Y. Industries	2,970.00		1,290.00	1,680.00
Rent—Houses—Outside Acct	47.10			47.10
Rent—Ground—Outside Acct	472.50			472.50
Dipping Income	.....		.....	.....
Water, Elec. & Heat Sales	1,847.33		1,847.33	
Interest	5,101.59			5,101.59
Bad Debts	1.40		1.40	
Sales Pavilion Income	.....		.....	
Misc. O, R. E. Inc.	79.68		79.68	(Water Sales)
Dividends—Casualty Ins	.....	5,500.00	5,500.00	.....
Yardage, Traders Volume	.....		.....	
Farm Operations	115.86			115.86
	$671,988.70	5,500.00	665,618.30	11,797.76

[fol. 1286] St. Joseph Stock Yards Co.

Expenses

Year 1932

	Total	Additions	Include	Exclude
Office & Management Payroll	$ 23,528.68		$ 23,528.68	
Miscl. Adm. Expense	6,071.50		71.50	6,000.00
Officers Travel & Entertainment	681.27		681.27	
Legal & Collection	1,500.00		1,500.00	
Pensions	5,268.74		5,268.74	
Donations & Subscriptions	2,423.46		302.88	2,120.58
Taxes	43,475.84		37,547.60	5,928.24
Depreciation	122,509.92		50,000.00	72,509.92
Insurance	13,701.59		12,324.59	1,377.01
Valuation Hearing	3,082.54			3,082.54
Bond Interest	46,014.02			46,014.02
Bond Discount	4,855.83			4,855.83
Office Rent	1,782.00		1,782.00	
Office Supplies	682.67		682.67	
Office Expense	120.24		120.24	
Office Postage	267.07		267.07	
Telephone & Telegraph	903.31		903.31	
Store House Expense	1,117.60		1,117.60	
Engineering	3.41		3.41	
Fiscal Agents, Registrars, etc	308.12		308.12	
Yard Pay Rolls	119,956.40		119,956.40	
Yard Cleaning & Disinfecting	19,241.37		19,241.37	
Yard Current	3,749.71		3,749.71	
Yard Casualty Insurance	3,528.75		3,528.75	
Estrays	375.07		375.07	
Water, Electricity & Heat	13,164.98		13,164.98	
Company Barn	1,922.28		1,922.28	
Yard Truck	120.47		120.47	
Cost of Hay Sold	26,040.85		26,040.85	
Cost of Corn Sold	52,069.29		52,069.29	
Cost of Oats Sold	416.10		416.10	
Cost of Bedding Sold	2,486.07		2,486.07	
Cost of Milled Feed Sold	4,421.29		4,421.29	
Cost of Hog Pen Bedding	177.96		177.96	
Milling Feed Expense	1,749.70		1,749.70	
Grain Elevator	1,005.70		1,005.70	
Weighing	3,479.28		3,479.28	
Dipping	85.56		85.56	
Car Partitions, etc	19.72		19.72	
Immunization Plant	453.09		453.09	
Repairs—Yard Structures	12,153.72		12,153.72	
Repairs—Water Lines	2,602.90		2,602.90	
Repairs—Sewers	561.76		561.76	
Repairs—Paving	1,074.16		1,074.16	
Repairs—Hay Barns	247.54		247.54	
Repairs—Equipment	319.88		319.88	
	549,721.41		407,833.27	141,888.14
[fol. 1287				
Brt. Forward	549,721.41		407,833.27	141,888.14
Repairs—Outside Property	796.72		412.58	384.04
Repairs—Exchange Bldg.	1,755.35		1,755.35	
Repairs—Feeding Facilities	281.76			281.76
Payroll—Traffic Dept.	6,804.00		6,804.00	
Solicitors Salaries—Traffic Dept.	14,921.00		14,921.00	

St. Joseph Stock Yards Co.

Expenses

Year 1932 (Continued)

	Total	Additions	Include	Exclude
Casualty Insurance—Traffic Dept.	2.28		2.28	
Postage—Traffic Dept.	326.55		326.55	
Printing & Stationery—Traffic Dept.	371.80		371.80	
Telephone & Telegraph—Traffic Dept.	1,681.50		1,681.50	
Misc.—Traffic Dept.	1,168.24		1,168.24	
Solicitor's Expense—Traffic Dept.	14,312.25		14,312.25	
Advertising	3,870.11		3,870.11	
Stock Show	2,764.99		2,764.99	
Exchange Bldg.—Labor	7,029.05		7,029.05	
Exchange Bldg.—Casualty Ins.	265.79		265.79	
Exchange Bldg.—Elec., Water Heat	5,055.68		5,055.68	
Exchange Bldg.—Supplies	1,635.39		1,635.39	
Truck Washing Expense	234.01		234.01	
Sale Pavilion Expense	3.50		3.50	
Misc. O. R. E. Expense	2,334.07			2,334.07
Casualty Ins. O. R. E.	36.96			36.96
Tractor & Trailer Expense	623.93		623.93	
Audit Expense	330.05		330.05	
Repairs—Furn. & Fixt.				
Bad Debts	320.52		320.52	
Cost of Shoes Sold (Employees).				
Bank Exchange				
Manure Sales Expense				
Bond Issue Expense				
Interest				
	616,646.91		471,721.94	144,924.97

[fol. 1288] . Depreciation Reserve

I do not think it could be stated from the figures I gave on re-direct examination that I believe respondent has escaped some personal tax which might legally have been applicable to it. My investigation which I made at that office revealed the identity of no one, neither the identity of myself nor of the Stock Yards Company, because I felt [fol. 1289] that their administrative affairs are their affairs and not mine. But I did want to look into the question that was brought up on my cross-examination about the application of these rates and I view the matter very much in the light that the county assessor views it. It is a practical situation which must be met in a practical way unless very serious harm would be done to companies in the State of Missouri, and in the City of St. Joe, and I have no particular criticism of it. However, as I say, my investigation

was made for the purpose of rebutting, I might say, the apparent criticism which was leveled at the sinking fund method of depreciation in so far as its accumulation is concerned, and I have, as I say, no criticism whatsoever of the company for paying what in their eyes and in the eyes of the county assessor is a reasonable, comparable personal property tax. (T. 1338).

I have never met the newly elected county assessor although I have been told that he was here and have seen the gentleman at this hearing. If in the sinking fund calculation, respondent purchased securities which were not tax exempt, and in filing its return for state and county taxes these securities were listed at their then current value, they would be subject to tax at the rate that is applied to 100 per cent of their assessed value. I would say, in effect, that respondent has been operating its depreciation account on the sinking fund basis. The sinking fund method of depreciation has as its basic idea the investment of the installment provision in something, that something may be stocks, savings accounts, it may be fixed assets; if the company feels that it has no immediate need for that money to replace part of their property, it can well be placed into a fixed asset and the Stock Yards Company apparently has [fols. 1290-1308] followed that idea (T. 1339). The Stock Yards Company has operated on the straight line method of depreciation reserve. However, it has also gone to the stage that in its policy as to provision for depreciation, they have gone into the sinking fund method, informally, in so far that moneys which have been provided for by allowance for depreciation have been invested in the property. An analysis of the balance sheet shows so much money invested in plant and assets of all kinds. From this analysis we cannot come to any other conclusion than that a part of that investment came from moneys provided for by allowance for depreciation. On the hypothesis that the depreciation allowance under the sinking fund method would be used for the purchase of non-tax exempt securities, the tax would be a personal property tax and would cut down the income to the extent of 60 to 70 per cent, at the rates specified on cross examination and on the basis of 100 per cent of the full and true value of those securities (T. 1340).

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Vol. II

TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1935

No. 497

ST. JOSEPH STOCK YARDS COMPANY,
APPELLANT,

vs.

THE UNITED STATES OF AMERICA AND THE SECRETARY OF AGRICULTURE

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF MISSOURI

FILED OCTOBER 7, 1935.

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VOL. II.

INDEX

	Original	Print
Evidence offered by respondent:		
Statement as to exhibits	1309	577
Testimony of S. F. Kosters	1310	578
J. R. Leslie	1333	584
S. F. Kosters (recalled)	1336	587
Chester S. Churchill	1419	625
L. R. Sack	1433	636
Henry J. Saunders	1437	641
Exhibit 125—Statement showing comparison of progressive depreciation accruals under straight line and sinking fund methods	1460	660
Exhibit 127—Statement showing analysis of investment and annual depreciation accruals	1465	664

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—7258-C

	Original	Print
Evidence offered by respondent—Continued:		
Testimony of Wm. Spratt	1597	768
Excerpt from Exhibit 132—Summary of valuation of land owned, August 1, 1932	1599	769
Excerpt from Exhibit 133—Statement showing value of land based upon average values, 1927-1932	1606	773
Testimony of Theo. J. Quinn	1635	796
Excerpt from Exhibit 134—Summary of valuation	1642	801
Testimony of Frank C. Black	1658	813
C. F. Topping	1731	816
L. R. Howson	1864	850
M. J. O'Malley	1884	866
Excerpt from Exhibit 147—Summary sheet showing net income for rate making purposes, 1932	1889	868
Excerpt from Exhibit 149—Summary of decrease in feed income, etc	1896	872
Testimony of John J. Melkowski	1910	876
Thomas C. Gorman	1912	877
Robert G. Symon	1921	885
Rebuttal evidence of Government:		
Testimony of Herman C. Henrici	1925	888
Surrebutal evidence of respondent:		
Testimony of Robert J. Stewart	1939	898
Stipulation as to abstract	1946	903
Order approving narrative statement of evidence	1947	903
Supplemental stipulation re condensed narrative statement of record and exhibits	1949	904
Præcipe for transcript of record	1951	905
Stipulation as to notice of appeal	1953-a	908
Order re inclusion of notice of appeal in record	1953-b	908
Notice of appeal	1953-c	909
Memorandum opinion and findings of facts	1954	910
Clerk's certificate (omitted in printing)	1987	
Statement of points to be relied upon and designation of parts of record to be printed	1988	938

[fol. 1309] **Evidence Offered by Respondent**

Injunction Proceedings

STATEMENT AS TO EXHIBITS

Counsel for respondent then introduced Respondent's Exhibit No. 101, which is a certified copy of the decision of the District Court of the United States for the Western District of Missouri, St. Joseph Division, permanently enjoining the order of the Secretary of Agriculture, issued on July 20, 1931 as a result of the prior hearing in this proceeding (T. 1356). Counsel also introduced Respondent's Exhibit No. 102 which is a certified copy of the Final Decree entered by the same court in the same proceeding, permanently enjoining the said order of the Secretary of Agriculture. Counsel also introduced Respondent's Exhibit No. 103 which is a certified copy of the Findings of Fact and Conclusions of Law entered by the same court in the same proceedings. Counsel also introduced the following exhibits which were also exhibits in the same proceedings and which covered the following subjects:

Respondent's Exhibit No. in this proceeding	Petitioner's Exhibit No. in injunction proceeding	Subject
No. 104	No. 11	Net income for rate making purposes year 1930.
No. 105	No. 12	Net income for rate making purposes last three months 1930 and first nine months 1931.
No. 106	No. 13	Statement of gross income found to be reasonable for years 1928, 1930 and year ending September 30, 1931.
No. 107	No. 14	Statement of expenses per books and expenses found to be reasonable for years 1928, 1930 and year ending September 30, 1931.
No. 108	No. 15	Statement showing analysis of gross income from feed and yardage and comparison with restricted income for years 1928, 1930 and year ending September 30, 1931.
No. 109	No. 16	Statement of net income per books and net income found to be reasonable, deducting the diminution of income in yardage for years 1928, 1930 and year ending September 30, 1931.
No. 110	No. 17	Increase in expenses due to separation of St. Joseph Belt Railway Company and St. Joseph Stock Yards Company.

(T. 1358 to 1361, inc.)

[fol. 1310] Cost of Reproduction New and Less Depreciation

S. F. KOSTERS, a witness called by respondent, being first duly sworn, testified in substance as follows:

Direct Examination:

Qualifications

I reside in Brighton, Massachusetts, part of the city of Boston, and am employed as an appraisal engineer with Stone and Webster Engineering Corporation of Boston and have been since the latter part of the summer of 1932, when I severed my connections with respondent (T. 1362). Since 1930 I have been continuously so employed. As an employee of Stone and Webster I am engaged in appraisal and report work. I testified at the prior hearing when I was employed by respondent, leaving respondent in August or September in 1930. Up to the time I left respondent my employment was the same as at the time of the hearing. The Stone and Webster Engineering Corporation is a subsidiary of Stone and Webster, Incorporated. The Engineering Corporation, of which (T. 1363) the Appraisal Division is a part, and of which I am a member, has done an enormous quantity of construction work. An idea of this volume may be obtained by the statement that 400 contracts have been completed to date, aggregating approximately $1,000,000,000 of construction work. This work covers a field of public utility, industrial work, and office building construction. During the term, it is significant that, of the 400 contracts completed, more than two-thirds of them were repeat orders from clients formerly served. The purchasing power of the company, during the last 13 years, covers the tremendous amount of $300,000,000. The Ap-
[fol. 1311] praisal Division has been very active during this same period of time, having at the present time completed appraisals of approximately 1,200 properties aggregating some $8,000,000,000 of property (T. 1364). During the last 13 years, 400 properties have been appraised, of which 100 were in connection with rate cases. Appraisals have been made in all parts of the world, including the United States, Canada, Newfoundland, Mexico, France, Germany, Poland and Japan. The principal appraisals made may be classi-

fied as follows: for rate cases, financial program projects, sales management, income taxes, and insurance. In addition to our ordinary routine of appraisal work and reports, we carry on special studies which may be termed as research work in the following matters: fair rate of return, accrued depreciation, requirements for retirement reserve, and price trends. I have personally been in direct charge of appraisals aggregating over $128,000,000 of property and have assisted in appraisals to the extent of $193,000,000 of property, the latter figure being additional to the $128,000,000 (T. 1365). Of the appraisals of which I had direct charge, I would say offhand that probably 25 per cent in that connection represented appraisals involving rate cases, 50 per cent representing appraisals involving financing, and the balance represented miscellaneous types of appraisals, such as sales or purchases, management program, and miscellaneous smaller types. I was responsible for the entire carrying on of the work and had responsible charge of the final results of the work in those appraisals. That included preparing and pricing the inventory, pricing of so-called overheads in connection with the inventory, as well as the amount of depreciation existing in the property (T. 1366).

Since my connection with Stone and Webster I have made [fols. 1312-1314] an appraisal of the Sioux City Stockyards and a public stockyards at Cincinnati which I believe is called the Cincinnati Stockyards Company. Since the former hearing I have testified before the Interstate Commerce Commission, the Kansas City Public Service Commission, the Missouri Public Service Commission, and the District of Columbia Utilities Commission.

[fol. 1315] Depreciation

I believe I am familiar with the method used by Mr. Henrici in determining depreciation. I heard his testimony as to the method he followed.

I would say that, in general, the methods are identical, that is to say, we both subscribe to the general method of determining depreciation by actual inspection. The details of the methods, however, are not exactly similar, but to my mind if the approaches had been similar, the results in the use of the methods would have been the same. My approach to the determination of existing depreciation is an approach to an engineering determination, and for the purpose of

clarity, I would express it in terms of three factors. The first factor may be defined as deferred maintenance. By that I mean determination of the cost of restoration of the property to a physical operating condition. Under this heading, the calculation results in an answer which is equivalent to the deferred maintenance under normal (T. 1374) circumstances, that is, expenditures which would have to be made because of some operating failure. It is in the nature of the running down of the property. The expenditures which are provided under this head should be considered to place the property in an efficient operating condi- [fol. 1316] tion. It is very capable of being estimated with considerable accuracy.

The second factor to be considered is what might be termed restoration expenditure. By this I refer to the cost to restore the property to a condition that would be substantially as good as new. This restoration expenditure starts with the situation after deferred maintenance has been provided for. It covers all the additional deterioration which could be remedied by repair, irrespective of whether it would be prudent to make such repair. To my notion, this class of expenditure would not improve the operating efficiency of the property. Neither would it improve the character of the service rendered by the property. An expenditure of this type might be considered in the light of being economically unjustifiable. This factor of restoration expenditure is also capable of being estimated with considerable accuracy.

Now, the third factor entering into existing depreciation might be termed unrepairable deterioration. And this provides for an allowance for such items which cannot be restored to a condition which would make the property as good as a property which was replaced 100 per cent; but it provides for the bringing back to the equivalent of physical perfection. It provides, I might say, for (T. 1375) an allowance for the physical deterioration of the property which still remains after the first two factors have been taken care of. It may better be defined as an abatement which would be economical between a buyer and a seller, in order to compensate the buyer, who would have a choice between the property as is, and a property entirely new. Of course, it implies a necessity for a larger or an earlier expenditure in maintenance on the part of the buyer, did he purchase. This item is capable of being estimated, al-

[fol. 1317] though obviously to no such degree as the factors explained as first and second.

I believe that if all three of these possible expenditures, the first two being expenditures, the second being in the nature of an allowance or abatement, were summed up, that it would give you a complete measure of the difference between the given property as is, and an identical new property. The purchase of any property, or this property, in particular, with an abatement equal to the sum of the three expenditures detailed, would make the property identically equivalent as a property new, hypothetically new, with no abatement. I determined the existing depreciation by making estimates of each of the three main factors about which I have elaborated (T. 1376). In regard to the so-called yard structures, by that I mean pens, fences, gates, paving and items of that nature, I grouped them to the extent that they would reflect in groups the same relative condition. In other words, I might have found in one instance a group of five pens which were necessary to segregate, or, as in another group, I might have found 50 pens were very similar in condition and could be grouped as to classification. Then the various items in that group of pens were individually analyzed (T. 1377) and the sum was totaled by using the three separate estimates to which I have testified. A building required a little more detail. It required breaking it down into its principal component parts and analyzing the individual component parts. By that I mean, for example, in arriving at the abatement allowance, which I spoke of as factor 3, I considered in general all wooden floors. I didn't analyze each room as an individual floor, but, of course, in this particular property, I had the advantage of having great familiarity with it, and it consumed nowheres near the amount of time that [fol. 1318] it would have consumed, had the property been strange to me. That familiarity was derived from my years of service as Chief Engineer for respondent. In determining depreciation, certain other factors such as obsolescence, inadequacy, and things of that nature are oftimes given recognition by appraisers and I, myself, always give consideration to them in any analysis made for the determination of existing depreciation. However, in my opinion, they are elements (T. 1378) which should not be considered as affecting the answer arrived at in the determination of existing depreciation. If an item of prop-

erty has become entirely obsolete or inadequate, it is my belief that it should not be found in the inventory. If it has reached a point of apparent partial obsolescence, it then becomes a question of economic value. In other words, it becomes less efficient, and under a given set of competitive conditions, the economic value of the less efficient item depends considerably upon its operating cost, as compared with the total operating and fixed charge costs of a proposed item, the difference between one and the other being the amount available for the capitalizable fixed charge on the less efficient item. Any estimate of partial obsolescence, I believe, would be impossible to sustain, except possibly in rare instances. Full consideration was given these items in respect to depreciation but no effect was found in the answer at which I arrived. The effect was reflected in the idea of whether the property was used and useful. I gave no consideration to the so-called service life theory whereby an attempt is made to estimate depreciation by an estimate of the percentage of the age to the total estimated life. I believe Mr. Henrici gave no consideration to that method either. The depreciation I was attempting to determine was existing depreciation (T. 1379). It had no reference to a theoretical life and contained no element of the theory [fol. 1319] in my approach to the subject. I would like to emphasize the fact that I think the method which I have used and which Mr. Henrici, I am sure, also used, are identical methods. I believe the results are different, entirely because of the difference in the approaches. I believe my approach to the subject has been an approach to an engineering determination. I hesitate to criticize somebody else's method or approach to a method, but it appears to me that the approach which Mr. Henrici has taken is wide open to possibilities for great error. I might state that it has been criticized in many instances and has even been called, instead of calling it an inspection method, has been called a gazing method. If the so-called inspection analysis made in a man's mind by this method of determination could be 100 per cent accurate, then I am sure that his answer and my answer would have been identical. However, I do not believe that the general scope of his approach permits of any engineering determination. It is merely judgment, and judgment over all in each instance. I heard Mr. Henrici's testimony as to how he obtained the condition per cent for each item by the use of various office assistants (T. 1380).

I have examined his appraisal in which these estimates of condition are shown. I think the results which I obtained from a study of Mr. Henrici's exhibit will bear out what I have just finished saying in my last statement, that it is entirely dependent upon the individual's over all judgment, and, in this particular case, I find that by using general averages of the estimates made by five individuals, that, upon analysis of the individual results, if any one individual's result had been used, we would arrive at a very different answer than the average produced. It shows, to my mind, that, in particular, two men who were working [fols. 1320-1331] under the same instructions had very decided and different views to the approach of the situation. For that reason, I believe that the very system used proves itself to be wrong. Using the results of one of the investigators, we arrive at an average condition of the entire property of approximately 81 per cent. That was investigator number four who, I think, is Mr. Schramm (T. 1381). Mr. Schramm probably should have better knowledge of the property than any one of the five men who made the inspection. During my association with Mr. Henrici and his assistants, I am sure that Mr. Schramm has spent by far the greatest amount of time on the property, that is, made more serious investigations than any of the other men associated with him in this investigation. He is one of the two that took part in similar determinations at the time of the last hearing in 1929 (T. 1382). If we considered one of these other investigators, number three, for example, and had used the results of his determination, we would have arrived at an answer of 69 per cent. Now, to my mind, the accrued or existing depreciation of that property can certainly be determined closer than 12 per cent, which is the spread between those two men. I think it very plainly points out the weakness of the approach. From my experience, either one could be right with that much variation between the two, but both could not be right. If one of them is right, the other one has had the effect of making the answer used in the exhibit wrong. That much difference in condition per cent, assuming one of them is right, would clearly indicate that the other one was extremely wrong, one of them was qualified and the other disqualified. Using the wrong one to balance or average the right one would likewise produce an erroneous result (T. 1383).

[fol. 1332] Land Values

Cost of Filling Land of Respondent

I was in my twelfth year as Chief Engineer when I severed my connections with respondent. During that time I was in charge of the engineering records of respondent which were quite complete. I had charge of the files and at certain periods I changed the filing system of those records. Since leaving the employ of respondent, I have had occasion to refer to those engineering records from time to time and they are still filed in the same manner they were when I left (T. 1401). Since arriving at St. Joseph this month, I have again examined these records to some extent. I discovered in those engineering records a map which showed the elevation of respondent's land prior to the construction of a portion of the present stockyards.

Respondent's Exhibit No. 113 is a photostatic copy of a map which has written across it "No. 79" which either I or my assistant wrote there at the time I was changing the filing system, which indicates that it was file number 79. The number that it previously bore, number 61, was written by L. R. Sack, former General Superintendent of the stockyards (T. 1402). Respondent's Exhibit No. 113 is the photostatic copy of the old map which is in the engineering records of respondent.

I had J. R. Leslie of Leslie Engineering Company, St. Joseph, make a topographic survey of the land of respondent as it is today (T. 1403).

[fol. 1333] J. R. Leslie, a witness called by respondent, being first duly sworn testified in substance as follows:

Direct examination:

I live in St. Joseph and am a civil or professional engineer, being owner and operator of the Leslie Engineering Company. I am also County Highway Engineer in this County, Chief Engineer of Big Tarkio Drainage District, Consulting Engineer for the Missouri Valley Drainage District, and the Little Tarkio District. I have been first vice-president and was last week re-elected for the third year of the Missouri Highway Engineers Association of this

State (T. 1404). I am a graduate of Armour Institute of Technology, class of 1906, and a graduate of the St. Joseph School of Electrical Engineering, 1909. Since that time I have been continuously following my profession as a civil engineer.

I made a survey of the entire property of respondent at about the time of the sale of the land to the St. Joseph Belt Railway Company. The map which was made as the result of that sale is dated March 1, 1930 (T. 1405) and bears the name of my company, Leslie Engineering Company. Copies of that map have been supplied to respondent (T. 1406).

Respondent asked me the latter part of last year to make a topographic map of the stockyards as at the present time. That required the making of a topographic survey. We ran levels over all of the lands owned by the St. Joseph Stock Yards Company, and taking readings as shown upon the map wherever there was a marked or abrupt difference in elevation of the surface of the land, we took readings at those points, and in the flat or uniform surfaces of the lands, we took them not to exceed 300 feet in distance between them over the entire area. Respondent's Exhibit No. [fol. 1334] 114 is the map I prepared as a result of that survey (T. 1407). On it I tabulated the elevations resulting from the survey. I personally made the survey and platted the map. It truly and correctly sets forth the elevations as determined by me by actual survey. The datum of the survey was above sea level.

I have seen the tracing of the original from which the photostat, which is Respondent's Exhibit No. 113, was made. I saw it first when Mr. Black, superintendent of respondent, handed it to me (T. 1408). The elevations on that map are shown above St. Louis directrix. It is possible to transpose that map to the basis of sea level datum (T. 1409). Mr. Kosters asked me to do it and I have done it. Respondent's Exhibit No. 115 is of the same scale as Respondent's Exhibit No. 113 and the elevations are indicated at the same places but have been raised to sea level for datum so as to make possible a direct comparison between Respondent's Exhibit Nos. 113 and 114. Raising the elevations to sea level elevation is really a matter of mathematical computation by the addition of a constant shown on this photostat map, Respondent's Exhibit No. 114, 412.731 (T. 1410). Respon-

dent's Exhibit No. 115 truly and correctly sets forth in terms of sea level the same elevations at the same points as indicated on Respondent's Exhibit No. 113. In addition to what is shown on Respondent's Exhibit No. 113 I superimposed on Respondent's Exhibit No. 115 the outlines of respondent's land Zones A and B. I had previously prepared land maps showing the lands of these zones. The outlines of these zones are shown by the heavy white line on Respondent's Exhibit No. 115 (T. 1411). Respondent's Exhibit No. 115 is on the same scale as Respondent's Exhibit No. 114, 200 feet per inch, but on a different scale from Respondent's [fol. 1335] Exhibit No. 113 which is 100 feet per inch. I merely changed the scale on Respondent's Exhibit No. 115 so that it would be of the same scale as Respondent's Exhibit No. 114. That is not an unusual thing to do and I do it from time to time in the practice of my profession (T. 1415). It has been truly and accurately done. In preparing Respondent's Exhibit No. 114 I used the basic map which I had already prepared of the land of the Stock Yards Company and that shows the various zone outlines which I had previously prepared.

Cross-examination:

Referring to Respondent's Exhibit No. 113, I know nothing whatever about that exhibit except such as appears on the face of the map. I do not know when it was made or by whom, or whether the elevations are correct or incorrect with the exception of one point, which are common points, on Repondent's Exhibit Nos. 113 and 115. That point is on the railroad tracks (T. 1416). I think that the elevation of the railroad tracks as shown on these two exhibits are the same and the thing I want to make myself clear on there was that all those points, which are elevations on the Atchison, Topeka and Santa Fe Railroad tracks where it crosses Illinois Avenue are the same on the two exhibits. Comparing these elevations to the present elevations of the ground as shown on Respondent's Exhibit No. 114, there is only a difference of 3/10 of a foot and that is the only thing that I have on the two maps to check with and that checks fairly closely. The railroad track at that point is now 3/10 of a foot higher than it was at the time Respondent's Exhibit No. 113 was prepared, assuming of course that the figures stated on Respondent's Exhibit No. 113 were accurate when the ex-

[fol. 1336] hibit was made. As to that I do not know (T. 1417).

S. F. Kosters, a witness previously called by respondent and sworn, being recalled, testified in substance as follows:

Direct examination:

I heard the testimony of Mr. Leslie and previous to his testimony I was familiar with the facts he stated. I have had occasion to examine and study the three maps which are Respondent's Exhibit- Nos. 113, 114 and 115 (T. 1418). These maps in general show that since the map which is Respondent's Exhibit No. 113 was made there has been considerable fill put on the lands of respondent. Where there is paving on the land of respondent at the present time the elevations shown on Respondent's Exhibit No. 114 would be on top of that paving. I heard the testimony of Mr. Henrici as to the depth of the paving and the only thing I would add is that I would like to fix a maximum which could have been used in respect to the figures which Mr. Henrici gave. I have considered the maximum thickness of the super-structures upon the land being approximately 5 inches. I am familiar with the depth of the paving, having had charge of laying a considerable portion of it and being in direct contact with the maintenance of the balance. No cinders are included in the paving in my inventory, nor in Mr. Henrici's (T. 1419). By cinders, I mean cinders as a base for paving. From Respondent's Exhibit Nos. 115 and 113, taken as one, compared to Respondent's Exhibit No. 114, I have been able to compute the difference in the elevations as shown, excluding the depth of paving (T. 1420). I could not do this for the entire property be-
[fol. 1337] cause Respondent's Exhibit No. 113 does not show elevations for the entire property. I was limited in my comparison of the exhibits to the limit to which elevations are shown which constituted all of Zone A and a good portion of Zone B. I have computed the average differences existing on Zone A as shown on Respondent's Exhibit No. 115 in relation to Respondent's Exhibit No. 114, and I find that the average elevation of the ground at the present time is approximately 3.6 feet higher, which means an average fill has been placed in of 3.6 cubic feet per square foot of

area. For Zone B it is 1.6 cubic feet of fill per square foot of area. I have estimated the present cost of making this fill (T. 1421). I estimate it would cost $1.00 per cubic yard to place the fill in the quantity required at the present date or as of August 1, 1932. That cost was based on the assumption that dirt in this quantity would have to be hauled to the property from approximately the same location in which it was originally hauled or a location known as King Hill adjacent or in the vicinity of Missouri Avenue. I based my estimate on the assumption that the dirt would be excavated from that hill by power excavators, loaded by power into trucks suitable for hauling that class of material and hauled to the respondent's property on the basis of an average haul of three-quarters of a mile and from those facts, and knowing the rates of rental or use of equipment and the rates of men required in this class of work, I have concluded that one dollar per cubic yard would be a minimum cost of this work (T. 1422). I have also estimated the cost of making the fill per square foot of land area in Zones A and B. For Zone A this would be approximately 13½ cents per square foot, and for Zone B approximately 6 cents a square foot.

To a limited extent I had charge of making some of [fol. 1338] the fill in Zones A and B. My particular memory goes to the construction of the new truck hog division in which considerable fill was made on Zone A. However, this fill was made at a greater expense than I have estimated, as it was principally made from cinders. However, the cinders served no purpose. It was merely a substitute fill. Earth would have served the same purpose. I also had charge of some other slight amount of filling. I don't remember the exact locations or my exact connections with it. I remember somewhat of a fill in connection with the building of a new truck cattle division, something in connection with the building of the new truck sheep division, but just the extent of that fill, I am not prepared to say (T. 1423). Other than Zones A and B the other land zones west of the railroad tracks have not been filled in the strict sense of the word. They have been graded to some extent, necessitating both cuts and fills, but in those instances the one balanced the other. I believe in no instance was any outside fill brought on to the land outside of the zones indicated. If structures similar to those on Zone A were con-

structed on the entire Zone C, in my judgment the land in Zone C would have to be brought to the approximate grade of Zone A which would necessitate an average fill of two feet over the entire area of Zone C. This fill would have to be brought from approximately the same location as I have anticipated bringing it for Zones A and B in case of a reproduction which would be from King Hill (T. 1424). The cost of bringing that fill would be approximately the same, which would make the cost 7½ cents per square foot for the entire Zone C. If the same questions were asked me about Zone D as Zone C my answer would be the same as to the necessity of fill and 1.3 cubic feet would be required at a cost of 5 cents per square foot. The same would be true as to Zone E at an average cost per square foot of 5 cents [fol. 1339] (T. 1425). The same would be true of Zone F necessitating approximately 1.6 cubic feet of fill per square foot at an average cost of 6 cents per square foot (T. 1426). The same would be true of Zone N and there would be approximately five cubic feet of fill per square foot of area at a cost of 18½ cents per square foot.

Threat of Floods

I heard the testimony of Mr. Zelinski as to the threat of flood conditions to the stockyards. I have been familiar with flood conditions in St. Joseph and in that vicinity for the past 15 years. Referring to page 11 of Government Exhibit No. 128, Whitehead Branch is to no extent a threat to the lands of respondent because the topography existing between the overflow of sections of Whitehead Branch and the stockyards naturally does not permit of damage to the stockyards land by waters from this source. Whitehead Branch troubles always occurred north of a range of hills which are west of 6th Street and King Hill Avenue, and which range runs out on the southerly side of Whitehead Branch. I mean by this, that the overflow of waters are north of the range of hills referred to. The damage which has been done by overflows, as to Whitehead Branch has always been directly on a line from the overflow portions to the Missouri River. I recall particularly the flood waters of 1925 and the damage which the overflows of Whitehead Branch caused at that time (T. 1427). I believe these flood waters were in June, 1925, although Mr. Zelinski has referred to it in his report as 1923. Undoubtedly

Mr. Zelinski spoke of the same flood that I have reference to, whether the year was 1923 or 1925; it is simply vague in my memory now. However, regardless of the year, I [fol. 1340] was familiar with the flood at that time. I was also engineer for the Union Terminal Railway, in conjunction with being engineer for the St. Joseph Stock Yards Company. I recall, very vividly, the damage which was caused by that overflow, but damage was entirely to the Union Terminal property, no waters from that flood ever reached the stockyards area (T. 1428). Apparently 1923 was the date of the overflow referred to and is the same overflow of which I am making my explanation. If the stockyards lands were in danger from any such overflow as described by Mr. Zelinski on pages 11 and 12 of Government Exhibit No. 128, it would necessarily mean that the water must first pass over the yards and shop areas of the Burlington Railroad. It is impossible for the waters to follow the line of 6th Street and down King Hill Avenue, because the contour just would not permit of it. It would have to extend down the Burlington right-of-way, that is the only way in which it could be reached, and, to my knowledge, the Burlington right-of-way has never been menaced by any waters, and, if they were not menaced, it would be impossible for the stockyards to be menaced, which are three miles further south (T. 1429). The menace that has occurred in years gone by has never been from the northerly direction, it has always been from the southerly direction. The statement on page 12 of Government Exhibit No. 128 that in 1923 water overflowed from Whitehead Branch and ran across and over the stockyards property down to Brown's Branch is not a true statement. The only method by which that could occur would be for it to entirely cross the stockyards areas, first, over the Burlington areas and then through the stockyards areas to reach Brown's Branch. This has never occurred in my fifteen years of experience with the Stock Yards Company. That occur- [fol. 1341] rence which is related there as having been in 1923 did not occur. I was chief engineer of respondent and also of the Union Terminal at that time and I am sure I would have gained knowledge of it had it occurred. In fact, I know it would have entailed (T. 1430) considerable work for me which it did in connection with the Union Terminal. As I recall, I worked practically day and night for about

five days and nights in order to get the Union Terminal in service again.

Referring to the threat of unusual flood waters from Contrary Creek mentioned on page 12 of Government Exhibit No. 128, Zones F, G, H, and I are not exposed to unusual flood waters from Contrary Creek at the present time for two reasons, first, the threat was obliterated when Brown's Branch drainage canal was redug, and secondly, the overflow of Contrary Creek itself is practically no menace anymore, due to work which has been done on Contrary Creek. Even before the completion of the digging of an outlet to the Missouri River, Contrary Creek has been a constant source of worry in years gone by and considerable work has been done on it in the nature of straightening out two bends and leading the waters to an outlet through Contrary Creek itself, which damaged Contrary Lake to a great extent and the recent move has been more of a salvation for Contrary Lake than it has to stop the menace to the north which would include the stockyards land (T. 1431).

When I stated a moment ago that the threat of flooding of the stockyards always came from the south, I referred to the Contrary Creek menace which is a past condition, having been eliminated by the facts I have stated, which are the changes in Contrary Creek and the improvement of Brown's Branch. I heard the questions asked Mr. Zelinski and the answers he made about dikes built across the farm [fol. 1342] land south of Zone F. I know such dikes exist. Their existence has a material effect on the threat of flooding by Contrary Creek. They stopped the normal overflow of lands at the point of the dikes so that it took an extremely high water to still remain a menace to the lands north of these dikes, they being located roughly about a quarter to a half-mile south of the stockyards lands (T. 1432). Those dikes were built by land owners down there to protect their lands north of the dike. They ran in height from nothing up to a maximum of eight or ten feet. I would like to correct the assertion made by Mr. Zelinski in regard to the washing out of a culvert on Memorial Highway at the time of high water. That was not a fact. The culvert was not washed out, the culvert was insufficient in cross section to take the miscellaneous material which came down Contrary Creek during flood times, and

for that reason the opening of the culvert would become clogged and not permit water to pass. That caused, in some instances a flooding of the creek, but that was a very severe menace to the Burlington Railroad and a severe menace to the highway, and a severe menace to the adjoining property owners. The State Highway Commission improved that condition some years ago by building a new and enlarged culvert, and that also had its effect on improving the situation in regard to the stockyards.

I heard the statement made by Mr. Zelinski as to water standing on Second Street in times of rain (T. 1433). I knew of the situation and then in order to confirm my own convictions I have since investigated it by going down to the site to confirm my belief in the matter. Mr. Zelinski's impression of the whole situation down there was in error. The four-foot sewer, which he testified about, was not built for any purpose of drainage west of Second Street. The [fol. 1343] purpose of that sewer was to relieve the Burlington's Second Street yards in times of excessive rain fall. The drainage area east of the Burlington's Second Street yards had no relief outlet. It was dependent upon the normal street inlets to take care of the excessive flood waters, which were far insufficient during many storms, and the Burlington yards were materially damaged. The city, probably, because of pressure by the Burlington Railroad, decided that they could have relief from this situation, and built a four-foot sewer from the east side of the Burlington right-of-way across that right-of-way across and under Second Street, and across lands between Second Street and respondent's lands, which, I believe, now and even then were principally owned by the Burlington Railroad, and they have obtained an easement for the laying of this sewer across the respondent's land to the Missouri River (T. 1434). This sewer was never designed to take off any flood water west of the Burlington tracks, adjoining Second Street on the east. The purpose, as I have stated, was relief for the Burlington. Now, in doing this, they paid no attention to the situation west of the Burlington tracks or from Second Street west to the River for drainage; at another time, the paving on Second Street at this point was resurfaced, and at the time of resurfacing, again no drainage was provided, except for the fact that certain swales were built in the pavement in order to allow

the running off of rain water from the surface of the pavement. After this 4-foot sewer was installed, and in conjunction with considerable complaint by citizens of the danger involved in the swales, so to speak, which were built in the pavement, the city decided, under pressure from the stockyards principally, that it would be well to change the surface of these streets, taking out the depressions or swales, as I have referred to them, and in doing this, it [fol. 1344] was necessary that some arrangement for drainage be made. Apparently, they did not have the funds with which to properly drain the streets, but they made a makeshift arrangement by having these points of depression drained to a very temporary sort of an arrangement, by digging a small ditch leading to First Street, immediately west of Second Street. At the point where this ditch came into First Street, a sizable inlet catch basin was constructed with the idea that all waters, and this only refers to rain waters, flowing on the pavement of Second Street, would be accumulated in this catch basin, and, from there, a connection was built to the 4-foot sewer for relief (T. 1435). The situation at Second Street does not menace the lands of respondent. In fact, the building of the 4-foot sewer permitted an improvement in respondent's lowest lands in Zone N by allowing respondent to tap that sewer with draining tile, making lands which before had been low and marshy to some extent, usable for cultivation. This 4-foot sewer does this properly.

Comparison of Various Transfers with Lands of Respondent

I heard the testimony of Mr. Zelinski as to the cost of giving the Grain Belt Mills a paved outlet. I have made what may be termed a rough engineering estimate of this outlet. I confined myself to the limits which Mr. Zelinski has placed on the outlet, that is, a one-way outlet from the Grain Belt Mills to the connection with the pavement at Packers Avenue and Lake Road. To provide this outlet, it would be necessary to build a hard surface pavement of approximately 200 yards long, and, at the very minimum, it would be necessary to make it three yards wide, which would entail 600 square yards of pavement at a minimum

cost, I would say, of $2.00 per square yard. It would mean [fol. 1345] $1,200. However (T. 1436) I do not think that a 9-foot pavement would be at all serviceable. It would not permit passage and in no wise would be comparable to the pavement with which it was intended to connect. I think that this should be at least 14 feet and, in that instance, the paving would cost a minimum of $2,000 (T. 1437).

I heard the testimony of Mr. Zelinski as to the amount of fill on the Larabee tract. I was engineer for the Union Terminal at that time, which was making certain improvements in the way of construction of new elevator capacity immediately west of the Larabee Mills tract. The Larabee Mills had previously purchased a tract of land immediately adjoining their former tract and had been considering for some time ways and means of putting that tract of land in a serviceable condition. It was necessary, of course, that they make connections with the Union Terminal for trackage, also with their existing tracks on the north of that parcel, and for this purpose it was necessary that the natural grade of the land which they had purchased should be brought to the approximate grade of the railroad and also their then existing plant land. At the request of the Larabee Mills officers, I worked out a scheme by which they were able to make a considerable saving by making that fill in connection with excavation work which was going on on the Union Terminal project. I arranged the negotiations and acted in a dual capacity for both the Union Terminal and the Larabee Mills in filling their lands, approving bills for payment on the cost of that fill, and (T. 1438) measuring the amount of fill. I do not remember the total figures of the fill but I do remember the average on that section was from 3 to 4½ feet in depth. That means that the minimum depth was three feet and the maximum depth 4½ feet approximately, the average being some place between three and four and a half feet.

[fol. 1346] I am familiar with the tract of land covered by sales sheet No. 10, being a tract acquired by the Union Terminal from the trustee of the Stock Yards Company and later two individual portions were leased, one to the Shell Oil Company and the other to the Painter Oil Company. Those leases were covered by sales sheets 19 and 20 (T. 1439). The Union Terminal had to make an expenditure on the portion of this tract leased as covered by sales sheets

19 and 20. I was responsible for developing the trackage into those leased areas and was responsible for the laying out of the work and the cost of the work, acting as engineer for the Union Terminal. I don't distinctly remember the total expenditures of the Union Terminal although I do remember that the cost of that trackage to the Union Terminal amounted to about $5.00 per lineal foot of the trackage. The distance was approximately 1,000 feet which at $5.00 a foot would make the entire expense approximately $5,000 to the Union Terminal (T. 1440). The Shell Oil Company filled about one-third of its leased area to the approximate grade of Lake Road. The Painter Oil Company did the same with respect to about one-fourth of its leased area. The Shell Company were required to put in approximately four to five feet of fill and the Painter Company three to four feet. As I compute it, the total area of the Shell lease is 52,200 square feet, one-third of which would be 17,400 square feet or 1,950 square yards at an average depth of 1½ yards would make a total fill of approximately 2,900 cubic yards (T. 1441). For the Painter tract the fill would be approximately 280 cubic yards.

Advantages of Present Construction of Stockyards

I believe I am about as familiar as anybody on earth with the present construction of the stockyards. I had close to 12 years to acquaint myself with the details of it and [fol. 1347] I believe I obtained a thorough knowledge of the construction. I think I had great opportunity to note and observe whether or not the construction had advantages or disadvantages from the viewpoint of operations (T. 1442). First of all, no one could have the intimate contact with the stockyards in general that I have had without becoming acquainted with the operating requirements of *that* yards. All of my work in connection with new construction or changes in construction of the yards has had as its very foundation the subsequent economy in operation. During all of those years, I was always in consultation with the manager and the other operating officials of the yards, knew at all times their views on economy of operation, learned to have views of my own on the subject, and was sometimes consulted as to my views; in all instances the summation of the views which were to be

carried as a feature of any construction program were consummated on paper by me, and from those very sources I felt myself more or less familiar and qualified to at least form a very definite opinion about the operation of the stockyards. In the course of my duties I saw the daily operations (T. 1443). I felt that it was my responsibility to see that the lay-out of the St. Joseph Stock Yards was at all times an economic one although it may not have been a direct responsibility on my part. I felt that the direct responsibility lay with the manager although my connection with any projects affecting operations always required my knowledge of it and sometimes even my opinion. I have a knowledge as to whether or not the St. Joseph Stock Yards Company's present lay-out has any advantages. I know that the St. Joseph Stock Yards is constructed in such a manner as to make it without question of doubt the most economically operated stockyards in the United States. [fol. 1348] This is for two reasons, first of all, the shape of the ground on which the stockyards is constructed is the ideal shape for an economical stockyards. Secondly, the improvements, both their own and the kindred facilities needed in connection with the operation of the stockyards are most economically designed for an economical operation of that stockyards. I know further that other stockyards throughout the country have always considered this to be a fact. I know that they have sought the advice of the officials of the St. Joseph Stock Yards in laying out new facilities of their own, because they recognized the fact that the St. Joseph Stock Yards was ideally designed. I have been in many conferences or discussions in which the general advice of the officers and employees of the stockyards was sought. I either expressed my views directly or indirectly (T. 1445). By that I mean that between the manager and the operating officials and myself certain recommendations were made when sought by outside parties. By saying that the shape of the St. Joseph lay-out is favorable, I mean that the general shape of the yards is a rectangle of the correct width, which is the prime feature of its operation. The length is correct for its present requirements and permits of easy expansion. The general operation of a stockyards, if it is to be economically performed, is dependent upon lost motion. By that I mean that the movement of livestock from the time of its ingress

to the yards to its time of egress to the consumer should be held at a minimum. I believe that the St. Joseph Stock Yards embodies this exact feature. There is no lost motion in movement from the unloading of livestock to the time of ultimate disposal from the yards. I heard the testimony of Mr. Zelinski as to possible changes in event of the reconstruction of the yards (T. 1446). My opinion is if the so-called ideal yards were to be constructed today they [fol. 1349] would be designed in substance along the lines of the present St. Joseph Stock Yards Company.

Cross-examination:

Cost of Reproduction Less Depreciation

Qualifications

I am now employed by the Stone and Webster Engineering Corporation. There are several affiliated Stone and Webster corporations but I am only employed by the Engineering Corporation (T. 1447). That corporation does the construction work. I do not have anything to do with the construction work as such. My work is confined to the appraisal department. I might add that I would qualify that to the extent that my work brings me into contact with the Construction Division on very numerous occasions. The Construction Division acts as consultant to the appraisal department. I do not have anything to do with the making of purchases. The Purchasing Department, which is a part of the Construction Department, works very closely with the Appraisal Division. If we have a problem on which we feel that we need some help we may go to the Construction Department, of which the Purchasing Department is a part, and I would say that on all our problems we need help from the Construction Division (T. 1448).

Referring to the aggregate amounts found in appraisals made by the Stone and Webster Engineering Corporation, the greater proportion of those appraisals were made before I was connected with the corporation. Since I joined the organization the appraisal work done by the Appraisal Division has been between one and one and one-half billion dollars (T. 1449). I have been in direct charge of appraisals of property owned by the Pennsylvania Power and

[fol. 1350] Light Company, having headquarters at Allentown, Pennsylvania; the Kansas Power and Light Company, headquarters in Topeka; the Kansas Pope Line Company, headquarters in Salina, Kansas; Peoples Gas Company, somewhere in that vicinity, I have forgotten the name of the town of their headquarters; Richfield Oil Company, Los Angeles, California; Washington Gas Light Company, Washington, D. C.; Georgetown Gas Light Company, Washington, D. C.; the Washington Gas Light Company and the Georgetown Gas Light Company of Montgomery County, Maryland; the Richfield Oil Company of New York, headquarters New York City; Sioux City Stockyards Company, Sioux City, Iowa; the Central West Public Service Company, Omaha, Nebraska; all subsidiaries of the Central West Public Service Company, located in Nebraska, South and North Dakota, Minnesota, Iowa and parts of Canada, I don't remember the subsidiary names; the subsidiary companies of the Central West Public Service Company located in South Carolina; other subsidiaries of the same company located in North Carolina; it is very difficult for me to recall names of companies because of the fact that so many names are continually before me in the office, on which I do a certain proportion of the work (T. 1450). There are probably eight or ten other companies which I have not mentioned and where I was in direct charge of the work. In addition to the appraisal of the St. Joseph Stock Yards Company property and the Sioux City Stockyards Company property, I have been in connection with appraisals of stockyard properties at Cincinnati, Ohio, and Connellsville, Pennsylvania. These latter two appraisals were not made for rate-making purposes. The only appraisals for rate-making purposes I have made are of the stockyards at St. Joseph and Sioux City (T. 1451). I have been consulted to some extent on other stockyards as an [fol. 1351] engineer, but not employed by them. I have testified on the St. Joseph Belt Railway Company's case, both those in the basic valuation procedure and in recapture proceedings; testified in the Union Terminal Railway Company's basic valuation procedure, and testified in the Sioux City terminal. I am not sure whether it was a basic valuation or a recapture proceeding. I believe it was a basic valuation (T. 1452). The St. Joseph Belt Railroad and the Sioux City Terminal Railroad are both stockyard

railroads in so far as they serve stockyards interests. The Union Terminal at St. Joseph is a terminal railroad. All three of these railroads are not owned by stockyard companies. The capital stock of the St. Joseph Belt Railroad was owned by the St. Joseph Stock Yards Company and I believe, although I am not positive, that the capital stock of the Sioux City Terminal was owned by the Sioux City Stockyard Company at the time I testified. At the time I testified as to the appraisal of the Union Terminal property, the Union Terminal Company was just as distinct in its connection with the Stock Yards Company as it was distinct from the Santa Fe Railroad. My testimony before the Kansas Public Service Commission and the Missouri Public Service Commission has been in connection with appraisals of properties I have referred to. My appearance before the District Public Utilities Commission was not in connection with an appraisal. I had no intention of giving the impression that the experience of Stone and Webster in making appraisals in which I had had no part had in no wise added to my own qualifications in making appraisals. It is my view that the appraisals made, for instance, before I became connected with Stone and Webster have added materially to my qualifications to appraise property for rate-making purposes (T. 1454). That would not be true if I had not been employed by them. That is so because corporations or companies in any business, like [fols. 1352-1378] individuals, profit by experience. The experience which Stone and Webster Engineering Corporation has gained in the appraisal of eight billion dollars worth of property undoubtedly is a factor in its reputation for making appraisals today. The results of that experience have been incorporated in the present practices of the appraisal division of that company, and are passed down from day to day in the light of their experience by coordinators in summarized thoughts, and benefits derived from that very experience. I am fortunate to be handed the results of that experience without having gone through the laborious details of obtaining it. Where one is employed by an employer who has had vast experience in appraisal work he would be in a position to profit by that just like I have been able to profit from Stone and Webster's experience. The appraisal which has been offered in evidence as Respondent's Exhibit Nos. 111 and 111-A to a very great ex-

tent effectuates the views of Stone and Webster as gained by their experience. I must acknowledge that I feel far better qualified to make an appraisal today than I did in 1929. This appraisal is different from the appraisal I made at the time of the prior hearing to the extent that there are features in the present appraisal which I did not even know existed in 1929. For example, the proper method of approach to obtaining the correct answer for existing depreciation, also the precisements which are used in our routine of setting up an appraisal (T. 1456), and many other elements which do not come to my mind immediately (T. 1457).

[fol. 1379] Depreciation

I did not find the composite percent condition for the entire property. That is merely a mathematical calculation of the property which I have included in my appraisal. The per cent condition is approximately 89 per cent. The composite percentage found by Mr. Henrici was close to 77 per cent (T. 1526). I consider the approach which I have taken to the subject to be the ideal approach, and assuming that that approach were followed by two independent, equally qualified engineers, I would expect the result to be very close. On the particular type of property under consideration in this hearing, I would expect the result would be within the limit of 2 per cent. The feature of my method of approach which I think brings about this result and guarantees it against any substantial variance due to the personal element is that it is an engineering determination. By that I mean it approaches an exact science (T. 1527). The first step in my method of approach is to estimate the amount of the deferred maintenance. By that I mean things which should be repaired or replaced, as the case may be, and have not been to the limit of operating effi-
[fol. 1380] ciency. As a practical matter, if the property efficiently serves the purpose for which it was designed, it is true that there is no deferred maintenance, although you can hardly see any property in which you do not find some slight degree of deferred maintenance. It may be only deferred for a day, but it still exists the day you see it, and in the ordinary course of events, would not be generally termed deferred maintenance, but in the practical determination of existing depreciation, the man making

the inspection would see this as an item of deferred maintenance. As an illustrative example of what, in my opinion, would represent this kind of deferred maintenance in the stockyards property, it might be that a board has been ripped off of a fence, and at the time the investigator saw it, that board was still off the fence. It might be that due to financial conditions of the company they have postponed the maintenance (T. 1528) program, for example, of painting a certain building which showed signs of neglect. On this score, there are any number of such instances that might be considered in the light of deferred maintenance. If a board on a fence has become partially decayed, one element of it would be deferred maintenance, but the decayed board would not necessarily be deferred maintenance. It would depend upon the extent of the decay. If the decay has reached the limit where the board should have been replaced and had not been, that would represent deferred maintenance. I do not say that there is no room for disagreement between two experts as to whether that stage of decay has been reached. My statement was not with respect to any individual part of my approach. My statement was in reference to the final answer which is arrived at by two experts after a consideration of three elements, one of which is the deferred maintenance (T. 1529). Even [fol. 1381] though there is room for diversion in one element, that would not be likely to produce a diversion in the result because if it was omitted in the first step, or the first factor under consideration by one engineer, it would be picked up in the second step under a different classification, or if not in the second step, it would be picked up in the third classification. If the pavement has reached the point of sufficiency for being repaired or replaced, then, of course, that should be done. If it is not done, that would be deferred maintenance in the pavement. One engineer might think that the pavement had arrived at the stage where it should be replaced or repaired, and another might not (T. 1530). The second step only provides for an estimate of the replacement or repair from the point at which the first step stops. From that point the second step provides for the further replacement to a condition which is practically, in so far as the replacement is concerned, or possibly you might say without replacing the item under consideration, in its entirety. The difference is that the

first step is economically justifiable at the time; whereas, the second step considers the fact that the repair or replacement would be uneconomically justifiable, or economically unjustifiable, to more correctly put it. In other words, the second step contemplates a repair or replacement which I think is going to have to be made at some future time that is not required or even proper to make at the present time. The third step contemplates an allowance for the loss which cannot be repaired. It is equivalent to an abatement or an allowance, or as between a buyer and a seller, because of the fact that the buyer knows that because of the present condition for which this very allowance is made, it will be necessary to make repairs and replacements sooner than if the property were identically the same as exactly new [fol. 1382] (T. 1532). The sum of the three steps should produce a result which represents the present found depreciation. The third step does not include the element of obsolescence and inadequacy. It has no bearing on obsolescence and inadequacy. Those elements are taken into consideration but are not computed as elements of existing depreciation. My method of approach contains no provision for finding any depreciation based on obsolescence or inadequacy. I am merely finding the existing depreciation on the property as I see it. I do not regard obsolescence and inadequacy as factors of depreciation. It is my opinion that if two engineers are not in agreement as to the necessity of immediate repair or replacement of a part of the property, and one places that part in his first step in this approach, and the other excludes it from his first step, it means that he will necessarily place it in the second or third step (T. 1533). No matter which step it is placed in, it has the same relative weight in the final determination because it is not figured on weighted basis. It is figured in dollars and cents. If I think that the pavement should have been replaced last month, and another engineer thinks it should have been replaced last year, that does not make any difference in the amount of accrued depreciation. I applied my method of approach to the determination of the accrued depreciation of respondent's property alone. I do not mean by that that I made all the final calculations, but I made all the field notes. In the matter of exercising judgment in the determination of what the final figure should be, it was entirely my own judgment.

The simplest explanation of why it is my opinion that the factors of obsolescence and inadequacy are not elements of depreciation is that I consider them rather elements of consideration as to the used and useful feature of the prop-
[fol. 1383] erty (T. 1534). If I were to inspect a power plant, for example, and in that power plant I found a unit of equipment which was not in serviceable condition—by that I mean that it could not reasonably be put into service—I would tag that inventory. If it had been gathered in the course of the inventory as not used property, and in setting up the inventory of that property I would be attempting only to set up the used and useful property. As I understand that is the basis for all rate proceedings, I would not include that item in the inventory. As an example, a generator that is not fit for operation and is not operating because of mechanical defects, or it might be that the indication that it had been strictly abandoned, maybe having been stripped of certain of its parts for use in connection with other equipment in the plant; if it had been left idle to a point of deterioration by rust, and the elements which in my estimation would make the item unserviceable, I would judge all those elements or those of the elements which I found, and would make a determination as to whether (T. 1535) the property was useful. It may not be used and still might be useful. For example, I make reference to items of equipment which are sometimes not used, but held strictly for stand-by purposes. In case I was dealing with a small power plant that had just one generator, and my investigation made it perfectly clear that while that generator was actually being used, producing current which was being sold, nevertheless it was so small in relation to the needs of the company that it was perfectly apparent that within six months or a year it would have to be taken out and replaced with a larger generator, I would consider it used and useful. And in that connection I believe that the rate payers would be fully justified in paying the carrying charges on that item, for in reality all they c pay is the carrying charge because I would con-
[fol. 1384] sider that the management had used discretion as to the time necessary for the replacement of that item, at which time undoubtedly the rate payer would undertake a new burden. I would not at that time, in the determination of accrued depreciation, give any effect to the de-

veloped inadequacies of that generator. That would not be true if it were shown that it was uneconomical to operate that generator (T. 1536) and that the rate payer was thereby taking on a burden by what might be termed mismanagement. I would give consideration to that. That would not result in a reflection to the accrued depreciation because it would never get to the point of obtaining accrued depreciation upon it. The generator would be eliminated from the inventory. Assuming two office buildings which cost the same amount originally to construct, one of which is much older than the other, both in sound condition in so far as wear, tear, rust, rot, and decay are concerned, but one of them so much more old fashioned than the other that tenants would not populate it except at rents less than the new building, if I were appraising the old building I would not give weight to that obsolescence in my estimate of accrued depreciation. I would give consideration to the occupancy of the building, whether it was serving any purpose for which it was built, whether the income had shrunk to such a point as to further burden the rate payer, whether I considered the management had made a mistake in not replacing that building (T. 1537) in order to lighten the load for the rate payer; and after a thorough consideration of those factors, I would either throw out the building entirely or add my recommendations as to its usefulness. If I were appraising both of those buildings on the basis of cost of reproduction new less depreciation, and I found it cost exactly the same amount of money to reproduce new each of the buildings, I would in no case reflect the obsolescence [fol. 1385] in the depreciation column, but I would bring out the facts as found, and I would make those facts effective in the valuation by reflecting them in the inventory. I would not inventory one of the buildings, or I would inventory it at a lesser figure than the cost to reproduce new column on the basis of certain facts which I found to exist and with certain notations of recommendations as to its usefulness (T. 1538). I might give some weight to the present use of it. With respect to the appraisal of 1929 and the testimony of Mr. Burnell, of Stone & Webster, I am not attempting to justify anything that Mr. Burnell said. I am very frank to acknowledge that the approach which I had in 1929 was entirely different than the ap-

proach which I had in 1932. I justify that by the simple statement that I have lived three years and, I think, learned considerable in that interim. There is no practical difference, to express the answer on a percentage basis or in terms of dollars. Even in instances, the computations may be computed in terms of percentage; but the real difference is in the general approach to the engineering problem involved. As I see it, one approach is an over-all estimate or, if I may be forgiven for criticizing, even an over-all guess; whereas, the other is an approach to an engineering determination or a mathematical calculation (T. 1539). I have qualified that slightly by saying that the third step in my approach is not 100 per cent applicable to an engineering determination.

Referring to the testimony of Mr. Henrici and myself on depreciation at the prior hearing, I think the general difference between us lay in the detail of the consideration of the elements entering into the building under consideration (T. 1540). If I found that the floor joists in a building are as good as they were when they were put in, I would still consider them as being in 100 per cent condi-
[fol. 1386] tion, and if I found that the paint or a wall paper is as good as when it was put on, I would find it to be in 100 per cent condition. Finding the plaster back of the paper to be deteriorated would have no necessary effect on the wall paper at that time. In wall paper you have picked an item which is rather short lived ordinarily, and I think my third step would compensate in that particular instance for what usage had been obtained in it. If I found a wood floor that was in perfect condition and the joists on which the flooring rests in unsound condition (T. 1541) I would give the finished flooring the effect of 100 per cent condition, but not the floor as a whole. I would consider that the repair or replacement was not necessary in the floor but in the joists. The result is that the finished flooring, which is in perfect condition, gets a 100 per cent rating, even though the floor joists may need a great deal of repair and replacement, with the possible exception that if in my third step, I allowed an abatement for the future repair of that joist or many joists, if the case so be, I would take into consideration whether it would be necessary to make replacements in the finished floor on top of it. If the necessary replacement of the joists would require the probable

destruction of the finished floor, I would take that into consideration (T. 1542). If that were the fact in the case, I would take that into consideration; and if, on the other hand, it might not be the fact, if the joist could be replaced or repaired without affecting the finished flooring, then I would not give the finished flooring any allowance. If I found in a brick wall that the common brick were sound, the face brick were unsound, and I found that the face brick could be replaced without affecting the existing common brick, I would give no consideration to (T. 1543) depreciation of the common brick. If, on the other hand, I found that in repairing or replacing the face brick it was [fol. 1387] necessary to go into the matter of the common brick, I would reflect that expense in connection with the common brick. With respect to the hidden parts of the property which the eye cannot see, I handled them in the light of the experience which I have had in the past. In this particular instance I have had considerable experience with certain elements, so-called hidden; probably a little greater advantage than I would have in the ordinary case. But even in the ordinary case, I think my judgment is mature enough in the light of my past experience to reasonably estimate what would be the condition of those hidden elements. If I cannot see hidden parts, I do not necessarily assume them to be in 100 per cent condition. If the portions exposed in and around them would indicate certain features affecting the hidden part, I would so give weight. For example, a brick wall that showed a crack on the outside and the same crack in the inside, I would naturally assume that the crack ran through the entire wall (T. 1544). In many instances, I would say that any item which had been exposed to the elements or to any element and had preserved its entirety, it would be reasonable to assume that the portion which had been protected had also preserved its original condition.

With respect to the property of respondent, I would say that as a practical matter it is pretty nearly true that I did not depreciate hidden parts, although there may be instances where I would give slight consideration to the deterioration in hidden elements. I think that crystallization is one of the elements of deterioration in steel work. I would say as a practical matter, if steel work were concealed, that ordinarily the protection which it had received would not tend to cause crystallization. It would not

crystallize where it was protected (T. 1545). There are practically no instances on the stockyard property where [fol. 1388] there is concealed steel work. There is some slight amount in the Exchange Building, but outside of that and a few lintel beams scattered through various buildings, I would say there are none. In those instances I would assume that the steel was in 100 per cent condition, because I know that crystallization with the elements involved and the lapse of time would not have occurred at this time. I could not state whether in the 1932 appraisal there are any major items as to which Mr. Henrici and I are in agreement as to the amount of accrued depreciation. I have not made any specific analysis of the differences in the existing depreciation, and I would like to emphasize that in answering all the questions where the term accrued depreciation is used, I refer to the term existing depreciation. I think there is a distinction (T. 1546). Depreciation does not necessarily accrue. By accrue I mean gradually accumulate or build up. I think the term implies that age has something to do with depreciation; whereas, I would like specifically to state that age has nothing to do with depreciation as I find it. Depreciation in some cases could build up gradually and in others come suddenly. I think in some instances it does and in some instances it does not. I do not recall any item of stockyard property at the present time which might, generally speaking, permit of accrued depreciation. By that I mean just because of age that depreciation occurred. There may be some such items, but I do not recall them at present (T. 1547). I stated that I did not believe that only because of age depreciation accrues to any of the property. In some instances it may be that depreciation comes little by little, and in some instances it may not. I do not think that lapse of time in and of itself is ever an element of depreciation.

In estimating my depreciation I determined the amount [fol. 1389] in dollars and cents occasioned by each of the three steps that I have described. In some instances they were figured separately and distinctly, and in other instances the first two elements were generally computed together. In the third instance it was always computed separately. I am unable to say just how and when each step was applied or just the manner in which each item was computed without referring to very voluminous notes of very voluminous items. I could not give the amount which

arises from each of these three steps without considerable study (T. 1548).

I gave no weight to obsolescence in determining the existing depreciation of the Transit House Hotel. I gave no weight to the fact that the building is not earning the cost of upkeep. I gave no consideration to the earning power of the building because I did not consider that any item of obsolescence entered into the earning power of that building, because I was very familiar with both the earning power and the reason for lack of such.

I did not find that the element of obsolescence existed in the horse barns, which are now used as sheep feeding barns. Apparently they are not more expensive in construction than is needful for their present use, because the management saw fit in very recent years to build a barn of the same type and character, and even a higher type than the existing building, for the purpose of sheep feeding. The management replaced a barn which had been partially destroyed by fire (T. 1549) but did not restore it as it existed before. They built a larger barn than had formerly existed. A portion of the old foundation was used, and a slight portion of the old walls were used where it fitted the scheme of the new construction. The design of the new barn was changed materially.

[fol. 1390] In determining the existing depreciation of respondent's property, I gave no weight to the service condition theory, if you mean by service condition the theory with the age and life (T. 1550). The theory, that if the property is capable of rendering adequately the service for which it was intended, the property has not depreciated at all, is covered by the first step of my approach only. The other two steps go beyond that point.

I testified as a witness before the Interstate Commerce Commission in Finance Docket No. 3906, the excess income of the St. Joseph Belt Railway Company. I believe the first time I testified was in the year 1925, and I believe it was still the same proceeding when I testified in 1930. The statement, "Witness is of the opinion that the so-called service value theory of depreciation is the correct method to be adopted in determining the value of this carrier's property for a rate base," properly reflects my testimony. If I were limiting my opinion without the influence of court decisions occurring since that time, I believe I might still hang to that theory, but in the light of

the present situation, I subscribe to the theory which I have adopted now (T. 1551).

When I referred to the so-called service value theory of depreciation in that proceeding, I intended to convey the thought that as long as the property was serving the rate payer to a degree of 100 per cent efficiency that the rate payer was in no wise penalized because of depreciation, and my thought was that just rates which he should pay was on the basis of the service performed rather than on the physical value of the property. That theory applied to the stockyards would mean that if the pens were adequately holding the cattle and providing facilities for the feeding and watering of the same in the pens, there would be exist- [fol. 1391] ing depreciation in those pens only to the extent of deferred maintenance. I gave that theory weight in my determination of the existing depreciation in this proceeding in a very minor part only. It is just one portion of the existing depreciation. It enters into the deferred maintenance portion and is a step in the calculation of depreciation which I have calculated to exist (T. 1552). In Finance Docket No. 3906 I made the statement "If this method were adopted, that is, the service method that I just referred to, there would be no reason for the depreciation reserve account except as a protection against retirement due to obsolescence or inadequacy based on a fair estimate of expected life" (T. 1553). I do not subscribe to that statement unqualifiedly at the present time because of the fact that the term "depreciation reserve" has been used very loosely to my notion in this hearing. As to the qualification which should go along with that statement, in the first place, I was testifying as to a very dissimilar type of property. When I said that there would be no reason for a depreciation reserve account, what I meant was that there was no need to set up in the reserve account the item of existing depreciation, or any accrual on that item which might take place. I had no intention of expressing myself as being anything but in accord with the reserve, or, as I wish to term it, amortization of the property, regardless of what features of amortization might be found to exist in the future, or what elements need be provided for in the reserve on an amortization basis (T. 1554). I mean that this reserve amortization is a substitute for depreciation reserve. I

have always personally thought that the term "depreciation reserve" was a misnomer. I believe that the security holder of the stockyards company is entitled to protection for future requirements in respect to retirement or other features for which the amortization is provided. Relative [fol. 1392] to the approach to the problem made by Mr. Henrici, I am rather reluctant to offer criticism of somebody else's method of doing anything, but I have stated very definitely that I do not consider Mr. Henrici's approach a correct approach. I do not mean necessarily that the results obtained by Mr. Henrici could have been obtained as accurately as he obtained them by anyone other than an engineer. His method has been criticised by many writers of good reputation in public utterances on the subject. The one particular criticism which is very firmly in my mind, and which possibly might not have the weight that some others would have, was written by the vice president of Stone & Webster Engineering Corporation. However, it fairly well expresses the ideas which have been advanced on the subject by others with whom I am not so familiar and whose names do not occur to me at the present time (T. 1555). As to whether my method of approach has been subjected to criticism, I have seldom testified in a case, or known of anyone who used the same method in testimony before State commissions, public utilities, or public service commissions throughout the country, who were not always subject to some criticism by that commission. However, I have never seen in print by recognized authorities any explicit criticism of the approach (T. 1556).

[fol. 1393] Land Values

Cost of Filling Land of Respondent

My estimate of the cost of filling certain properties of respondent and certain properties adjacent to respondent's land was $1.00 per cubic yard. A part of that cost would arise from the necessity of excavating the earth which you use as a filler. If I were doing that excavation work I would prefer to use steam shovels. It would make no difference whether they were purchased or rented. The quantity involved for the estimate would undoubtedly use up the [fol. 1394] normal life of equipment of this type, and therefore it would reflect back to a rental basis. As to how many

yards a shovel would excavate a day, my computations were not made on that basis. I believe I can give you a fair answer to that question if you see fit to have me follow that line. The basis of my computation was for contract work, that is, the excavating would be done by a contractor and the hauling by another contractor (T. 1560). I estimate the excavating contractor would charge a minimum of 20 cents a yard. The average length of haul would be ¾ of a mile. The balance with the exception of the spreading cost would be the cost for haul. I actually arrived at a figure of $1.05 and $1.10 but for the sake of being on the minimum side and for the sake of using a round number, I adopted the price of one dollar. The haul and spreading would cost 80 cents. The spread would cost about 10 cents a yard. I gave consideration in a general way as to the number of trucks that would be used. However, I based my final conclusions on a contract price. I think the equipment which I had in mind would load on an average of 15 trucks per hour, and that probably a round trip for a truck would require one-half hour; therefore, the necessary trucks would be in the neighborhood of 7 or 8 to 10 (T. 1561). Those trucks would be of large capacity, the so-called four to five ton truck, which would carry approximately 2½ yards of solid earth. Spreading would consist of two operations, one would be the general spreading and the other would be the finished grading. The general spreading would probably best be handled by hand and the finished result would probably be brought about by the use of a blade. The finished result would be the general leveling of the dirt. That would not be the leveling that would prepare it for paving. I think it would require for paving additional leveling because it would be necessary to prepare it for drainage, which would [fol. 1395] not be done at that time, and it would probably be a cost applicable to the paving rather than to the grading (T. 1562). By preparing it for drainage, I mean preparing the sub-grading for a given drainage required by the finished pavement. I refer to a certain degree of differences in the level of the pavements so as to make it drain and not to the laying of sewer or drain tile. I cannot give you the total truck hours that I estimated would be required per cubic yard of fill or the total man hours. I didn't base my estimate on that. I might say that the situation which I have described for such an operation, of

course, is a set-up to take care of the maximum excavating and hauling requirements, which never in actual practice extend over the entire period of the work. In fact, the maximum is always greatly discounted by average conditions of the work. I made inquiry of the Lehr Construction Company of St. Joseph as to what they would do this work for (T. 1563). They did not make a bid. There was a general conversation in which I discussed the situation and asked for an opinion as to the contract price which would be obtainable under existing conditions without any particular threat to the present distressed conditions. The opinion was somewhat higher than $1.00 a yard. I believe that the filling of respondent's land would necessitate a greater expense per cubic yard than the filling of the St. Joseph Belt Railroad. I am referring now to the fill of the St. Joseph Belt Railway which was inventoried in the basic valuation after the fill on that property. That did not go back to the point of filling the original raw land, whereas my estimate of filling the respondent's lands goes back to the point of filling the original raw land which was, at the time of originally filling, marsh. This is not true to as great an extent of the Grain Belt Mills and the Larabee [fol. 1396] Mills land (T. 1564) although these lands are somewhat soft due to the fact that they are low lands but not nearly to the extent that the respondent's lands were before filling. I assume that respondent's Zone A and the right-of-way of the St. Joseph Belt Railroad adjoining were in quite similar conditions as raw land. There is no difference in the kind of filling for Zone A and for the Belt Railway. The difference goes to the extent of the filling. That would change the price per cubic yard because the extent of the St. Joseph Belt filling was approximately on the basis of the present existing fill on respondent's lands. I do not say that where the amount of earth to be used in the fill is relatively small the per cubic yard costs will be less. The reason is that the conditions under which that fill would have to be made were worse in the case of respondent's land than in the case of the fill which was inventoried by the St. Joseph Belt Railroad (T. 1565). I refer to the marshy conditions. I can make myself more clear probably if I say that in the estimate of the fill under Account 3 for the St. Joseph Belt Railway Company, it was assumed that the fill was only that portion over and

above the natural ground level as existing today. In other wards, where the St. Joseph Belt Railway adjoins Zone A, there was practically no fill. I believe absolutely no fill figured for the St. Joseph Belt Railway Company, whereas in respondent's lands it was figured to a considerable depth (T. 1566). In Finance Docket No. 3906 before the Interstate Commerce Commission I accepted the figure of 35.5 cents per cubic yard. It is not my opinion that the marshy condition that existed in Zone A would increase the cost from approximately 35 cents to approximately $1.00 a yard; that is just one of the elements. The two situations are entirely dissimilar. The fill for the St. Joseph Belt would not necessarily come in total from the same source [fol. 1397] from which it would be necessary to make fill under respondent's land. Many things entered into the fill on this St. Joseph Belt Railway Company, where it was very possible and probable to obtain a great deal of this fill right on the site itself. In fact, the drainage ditches adjoining the right-of-way would give great access to procure that fill. The two situations, as I see them, are in no wise comparable. If my memory serves me correctly, the fill which is inventoried in that section of the Belt Railway ranges from 2/10 to 8/10 of one foot, and I am not so sure but that some of that was cut instead of fill, but I think, in no instance did the grade reach as high as one foot (T. 1567) either for cut or fill. In other words, it is simply scratching the surface at that section of the right-of-way.

Miscellaneous Land Data

Referring to my estimate of the cost of $5.00 per foot for the railroad tracks which were built to serve Sale No. 10, I based the estimate upon the use of 85-pound rail. I do not remember definitely whether that was a new rail or relay rail, but I do remember that about that time relay rail was very high as compared with new rail. In fact I remember an instance where we bought new rail because the difference in price was not sufficient to warrant the purchase of relay. I am not prepared to say whether that is new or second-hand rail. I don't remember the price which I used. I do not have any notes on it with me. I have no notes on the Union Terminal. I believe the ties were 7 inches by 9 inches, treated ties. I do not recall the price of the ties (T. 1568). All the other track materials

which go to make up a switching track were considered in that estimate. That would include turn out materials, tie [fol. 1398] plates, rail braces, spikes, bolts, the grading cost would enter into it and the service charges would enter into it. I do not remember how much I allowed for grading costs or for surfacing costs or how many men I contemplated using in track laying, and I don't recall how much track I contemplated they would lay per day. I remember nothing of the details of the estimate. I do remember the over-all costs.

In the filling of Zones A and B, I contemplated moving the earth from King Hill (T. 1569). In the actual filling all of the earth used, as I understand it, was moved from King Hill. In the truck-in division where I used cinders the depth of fill ran somewhere from a foot to eighteen inches. I would say at the deepest point it was a maximum of two feet although I am not sure about that. We used cinders at that time because they were readily available and probably cost not to exceed what it would have cost to import the fill from other sources. I think some of the cinders came from packing plants and I believe some of them came from St. Joseph Belt Railway Company. I don't remember what that cost of fill per cubic yard was. I am pretty sure that it cost more than $1.00 but that was to be expected because it was a small job (T. 1570). I was in the service of the respondent approaching 12 years when I severed my connection. Since then I have been more or less familiar with this property, having visited it six or eight times in periods ranging from one day to one month. My period of service began about the first of 1919 and ended the latter part of 1930. During that period I was acquainted with the property, particularly the main operating portion of it on Zone A day by day. During that period I observed that there were several hard rains, rains of extraordinary volume. There were times in which flood waters caused inconvenience and even damage to respondent's property to a limited [fol. 1399] extent. I don't recall the exact occasion of a rain on June 8, 1920, when there was 2.97 inches of rain fell in an hour (T. 1571), but I think I am thoroughly familiar with all the rains that occurred during that period unless I happened to be out of town. Without remembering the exact date I remember occasions when the sewer and surface drainage in South St. Joseph was inadequate

for limited periods (T. 1572). If it were raining pretty hard I probably was more concerned with Illinois and Packers Avenues than I was with Missouri and Kansas Avenues. Missouri Avenue runs right down to Zone A but the drainage outlet from Missouri Avenue is much better than it is at Illinois or Packers Avenues for the reason that it is deflected to open drainage ditches on respondent's property at that point. Any slight damage which might have been done did not come from Missouri Avenue. I recall a considerable number of occasions when Brown's Branch overflowed in my early connection with the stockyards. If I were told that there was a rain of one inch in 22 minutes and that the newspapers recorded that Brown's Branch overflowed and Lake Road west of the railroad tracks overflowed, I would not be surprised. I have known that to be a fact. I do not remember the exact date but I remember such an instance about August 8, 1923. However, I think that is Lake Avenue rather than Lake Road (T. 1573). Lake Road is a long ways from Brown's Branch. I would not be surprised if I were told that on June 24, 1924, there was 2.36 inches of rain in 54 minutes and that the newspapers recorded that Brown's Branch was inadequate and it broke through the retaining bank and debris was washed onto Illinois Avenue and that the Justice Court in the basement of the Transit House was inundated and there was 8 inches of mud at Cheroke and Lake Avenue and bridges [fol. 1400] were washed out. I remember all those instances very well. I remember Whitehead Branch washed away. I never remember of Lake Road being flooded (T. 1574). I remember of Lake Avenue being flooded. Again on May 16, 1925, there was 1.64 inches of rain in 37 minutes and the big Brown's Branch on that occasion took care of the water without trouble (T. 1575). As to whether on June 3 there were 3.90 inches of rain in one hour and 46 minutes, and the newspapers recounted that for the second time the upper Whitehead Branch today (that was that day) did not take care of the water; the other time the trouble was caused by an obstruction at the sewer entrance; the Union Terminal line between Larabee Mills and Pioneer Sand Company, Second Street road bridge across Whitehead Creek could not be crossed, 100 feet concrete bridge across Whitehead Creek entirely disappeared, highwater at Burlington shops held up Union cars, Brown's Branch did not hold, no kill-

ing at packing plants, the subway at the stockyards was almost filled with water, between Larabee Mills and the packing plants, 12 acres were inundated like a vast lake, and the break was caused by flooding of Whitehead Creek, and, on that same day, the water blocked in Contrary Creek and three-fourths of it flowed back into South St. Joseph and flooded it, and again the Justice Court in the Transit House was flooded with 8 feet of water; cattle and hogs in the lower pens in the stockyards, were moved to higher pens; the paper said that last night (this was the paper of June 3) pens were 4 feet under water, scales were under water late today, (that was June 3, 1925), and the paper also announces that the City Engineer, after survey, states improvements will have to be made in sewers on the south side, I am acquainted with practically all of those facts but I recognize some exaggeration however (T. 1576). There [fol. 1401] was some water stood in front of the Exchange Building on Illinois Avenue at that time for a very limited period. You realize that the reason for the water standing at all was the fact the sewers were overtaxed momentarily to take it off, and the fact that the sewers backed up is what caused the water to stand. The water was not from the water itself, but simply from the inability of the sewer to take the water fast enough. I would say the maximum amount of water in front of the Exchange Building at that time, not regarding the depth in the gutters which are very pronounced in that vicinity, but considering the ground and the roadway, I would say that probably the maximum was 4 inches. In regard to the moving of livestock to higher pens, that was in anticipation of a realization which never came. It was not because the pens were flooded and the stock was forced to higher pens. I don't recall the 12 acres which were inundated (T. 1577). I recall the incidence of the June flood in 1928 (T. 1578). I recall generally the heavy rains that occurred during the period between 1919 and 1930 (T. 1579). There was a periodical flooding of lands in the vicinity of respondent's land but that is not true with respect to respondent's lands. I know of no instance of flood water running on respondent's land. I have stated of the instance or instances, in some cases, I guess possibly two or three instances, in which this sewer capacity on Illinois Avenue was insufficient for a very limited time, and the water on it found its way through the manholes to

the surface, and, so to speak, Illinois Avenue held water for sometime. Illinois Avenue, as such, is respondent's land, but when I spoke of the respondent's land, I thought in the terms of the respondent's operating lands with reference to their pen areas and building areas. The damage to a street [fol. 1402] that instance is negligible except in regard to cleaning up the mud which is deposited on such occasions (T. 1580).

The union wage scale that I used in my appraisal was effective as of August 1, 1932. I wouldn't say it became effective on that date. I don't know whether it had become effective previously or as of that date. When I stated that Whitehead Creek constituted no threat to the stockyards property and that was because of the topography of the land in between, I was speaking of all of respondent's property. The question may have been directed to Zones A and B, but if it had been directed to all of the property my answer would have been the same. The dikes which I spoke of as having been built by farmers were built, I would say, sometime between 1920 and 1925 (T. 1581). Referring to the 4-foot sewer leading from Second Street, the thought I intended to convey was that at the time of construction of that sewer, in return for the easement which the Stock Yards Company granted to the city, the city regranted back to the stockyards permission to tap that sewer at will, and at time of construction, I, personally, made connections to that sewer at several points to lines of drain tile which we laid in the southeastern portion of Zone N. Referring to the one thousand feet of spur track in connection with Sale No. 10, I stated that the approximate cost of that track laying averaged $5 per lineal foot. I imagine there was a so-called completion report made on that project. That would be in the files of the Union Terminal if a completion report were made (T. 1582), and it should show the exact cost. It should show all the materials and the amount of labor expended. However, the connection with the main line may be buried in some other job. As I recall now, that track and the track to the St. Joseph public elevator were laid about the same time and came off of the same main [fol. 1403] spur. The various fills which I spoke of including the Grain Belt tract, the Larabee tract, and those gasoline stations in Zone N on Lake Road, I estimated at $1.00 per cubic yard. In arriving at that $1.00 per cubic yard

estimate, in order to save the work of many computations of different bases, I tried to fix an average price which would apply to all the zones under consideration and all the sales tracts under consideration.

I am familiar with all the stockyards in the country to some extent. I believe I have visited practically all of the major stockyards and some of the minor one- (T. 1583) but even those which I have not visited I am acquainted with their lay-out through exchange of maps and contacts with representatives of those yards. I would like to change my statement in regard to the entire United States and make it include Canada too. I am familiar with yards in Canada to some extent. I am not familiar with the stockyards that have recently been erected in Philadelphia. I don't consider the Philadelphia yards comparable yards to St. Joseph. That is on account of size principally. I had in mind in what I said principally the major stockyards of the country, although I had some knowledge of the minor ones but not in detail on all of them by any means. I should think that the commission men should have a knowledge of the operating conditions of the yard (T. 1584). If some of the commission men at St. Joseph had testified and their counsel contended that they should have higher rates on account of the peculiar difficulty of this yard from an operating standpoint that would not change my opinion because behind there I know there may be many peculiar difficulties for commission men which would have no bearing on the layout of the stockyards. This would be principally rules and regulations laid down by the Stock Yards Company [fols. 1404 & 1405] in respect to commission men's operations. They make many rules which the commission men would consider difficult or a hardship, so to speak, but I think the Stock Yards Company tries to be fair in all instances in their dealings. Knowing the disposition of the Stock Yards Company, and also being quite familiar with the disposition of the commission men in general, I would not be surprised if the commission men would complain. I don't know anything about the commission men's case at St. Joseph (T. 1585) and I do not know that the management of the Kansas City stockyards contended that it was the most conveniently laid out yard in the country but I would admire him for that position.

Redirect Examination:

[fol. 1406] Depreciation

In Respondent's Exhibit No. 112 I was not attempting to fix the value of the property of respondent in 1927. What I was attempting to do was to find what the present property would have been worth using as a basis the cost existing in 1927. That would include the present existing depreciation in that property. It would only differ from my present appraisal in that the prices used would be for the year 1927 or any of the other periods shown on Respondent's Exhibit No. 112 (T. 1590).

On page 1526 of the transcript I stated the composite condition per cent of respondent's property was 89 per cent which resulted from a calculation wherein I divided the total shown at the bottom of page 5 of Respondent's Exhibit No. 111 in the column headed "New" into the total on the same page in the column headed "New, Less Depreciation." The condition per cent in respect to the portion of the property which I have described as "Total, Material and Labor" would be 87 per cent. The depreciated figure for "Miscellaneous Structural Costs" was not arrived at in that manner but the result would be the same if that 87 per cent were applied to the new figure for Miscellaneous Structural Costs (T. 1591). My idea is that obsolescence and inadequacy should be reflected in the cost of reproduction new, where found to exist. If I had an item which was to some extent obsolete in that a like article was not being manufactured at the present time, I would obtain a quotation from the manufacturer of similar items at the present time, and items of modern design, based on his best judgment of what the item under consideration would be worth, were it manufactured at the present time. Ordinarily I believe the price would be lower than an article now being manufactured of perhaps a later design. As-
[fol. 1407] suming I had a $2000 article, which is being manufactured to-day in some improved design and which cost $2000, and assuming I was valuing an article of an earlier design which is no longer manufactured but which, if actually manufactured today, would also cost $2000, and assuming further that the value of the latter article now at the present time would only bring $1000 because of the

older design, my cost of reproduction new of that particular article would be $1000 (T. 1592).

If I were determining the cost less depreciation of this article which I have stated I valued at $1,000, I would make the same computations referred to on my direct examination, consisting of three steps, and would be bound to arrive at the same results. Assuming after I make those computations, I find that $100 to be the engineer's estimate which would cover the extent of the depreciation, the cost of reproduction less depreciation on that article would be $1,000 less $100 or $900.00 (T. 1593). If I were to recognize the feature of obsolescence as an element of depreciation, my computation of the same item would be reproduction new $2,000, depreciation $1,000 plus $100, which subtracted from $2,000 would result in cost less depreciation of $900, or the same as in the other cases (T. 1594). In arriving at the $1,000 depreciation I would determine that in the same manner I used in fixing the cost of reproduction new of that article under the first method of calculation. There would be no reason for changing the basis in arriving at the amount of obsolescence. I believe going to the manufacturer of both these articles to get the relative value of the older design as compared to the newer design would be the best source of information. As a general proposition I would take care of obsolescence to the extent it existed, and also inadequacy in the cost of reproduction new. Had the occasion arisen where such a method would [fol. 1408] have been required, I would have followed it, but no occasion arose. I had that matter in mind and gave it the full consideration it merited in the light of respondent's property (T. 1595).

In any of my computations as to the cost of reproduction new and less depreciation I made no computations as to the proper deduction for depreciation reserve. I gave that subject no consideration or investigation, as I was not concerned with it in this instance. I would have no incentive in going into that matter, because I have no thought that they have any connection whatsoever. On page 1534 of the transcript I testified: "Q. For instance, if you think that the pavement should have been replaced last month and the other engineer thinks it should be replaced next year, that does not make any difference in the amount of accrued depreciation. A. No." That did not fully express my thoughts at that time. I believe I misun-

derstood the question to some extent. I think I had in mind that Mr. Bohannan's question was putting it rather than to next year to the next day, a very limited interim of time. As a practical matter, if that had been the intent of the question, my answer would have been the same as it was. However, the very basis upon which I arrived at depreciation would, in its third step of approach, give consideration to the additional one-year life which the pavement had to live, and my answer would be slightly different in the two instances (T. 1596). When Mr. Bohannan used the word "accrued depreciation" I understood him as meaning existing depreciation.

When I used the phrase "lapse of time in and of itself" in my cross-examination, I did not mean that I did not give effect to things which ordinarily accompany lapse of time. I gave no effect to anything except merely lapse of time in [fol. 1409] and of itself. I did not mean that I excluded from consideration the things which ordinarily accompany lapse of time, and which may or may not affect the condition of the item of property I am observing. I gave consideration to the property as I found it, which may have been affected by certain items which were in effect during that lapse of time. What I intended to convey was that the age of the property had no effect on my computation. I might find one property ten years old in better condition than a similar property five years old. To that extent, the lapse of time has no effect on my calculation, but any element, and I assume that you mean such elements as rain storms, air, and other natural elements, which naturally occur during that lapse of time—any effect which those elements might have had on the property were given full consideration; because I viewed the property as was (T. 1597). In taking a particular item of property, I did not determine the date that item was installed or built, compute its existing life, and make a mathematical calculation as to the amount of that life which had expired, and reflect that directly in my depreciation computation. I considered that theory long ago obsolete and in the discard. I agree substantially with the statement made by Mr. Henrici as to the effect which I gave to age of a specific article. I believe Mr. Henrici meant the same thing when he said that only in so far as age has affected the property, by which I understand he means the elements occurring during that age have affected the property.

It was not part of my appraisal to determine the earning power of each item of property such as the Transit House. I do not see where that would have any effect on the value of the property. I made no such determination in connection with the cost of reproduction new less depreciation (T. 1598). If I made such a determination, I would have [fol. 1410] something entirely different from cost of reproduction less depreciation. I don't know what it would be. Capitalizing the earnings is the only way I know that earning power could be used (T. 1599).

I was interrogated about the so-called service value theory of determining depreciation. In that connection I said it constituted only the determination of the amount of deferred maintenance which existed in the property. That is the first and minor step in the method which I followed in this proceeding. I made two other calculations, both of which produced greater results than the first in all instances.

In respect to the statement I made as to my method being criticized by some of the Commissions before which I appeared, my intent was to convey the thought that on cross-examination many times opposing counsel apparently did not agree with my contention, and in that light I considered it as criticism (T. 1600).

Threat of Floods

After hearing all the matters which counsel for the Government read to me and about which I was interrogated on the subject of high water, it is not my desire to change my direct testimony in any substantial effect in respect to the threat of floods as applied to the property of the St. Joseph Stock Yards Company. As to the particular rain on June 3, 1925, where counsel for the Government stated 3.9 inches of water fell in 46 minutes, I of course don't know the accuracy of that particular statement as to inches and minutes, but I do not doubt that they are approximately correct. I know a lot of rain fell at that time. That water, in whatever amount it was, passed off of respondent's lands pretty quick. That did not affect the operations of [fols. 1411-1415] respondent's stockyards in any material way. Since being interrogated along that line I have seen fit to look up the records of operations on that date (T. 1601). I find that the business of the company was han-

dled in a normal manner on that day; that the receipts were so-to-speak normal; I found, for example, that on that day 5,512 hogs which were included in 283 scale drafts were weighed, and the general business finished in the early afternoon, approximately the same time it was finished the day before or the day after, or any other normal operating day. I also found that in the cattle division there were 345 drafts weighed, approximately 2,000 head, and that that business was handled in a normal, orderly manner, and completed at a normal time of day, the early afternoon.

Four inches of rain in approximately 45 minutes is generally termed a cloudburst. I know of few localities, if any, in the United States where sewers are designed to take care of very intermittent, extreme conditions such as this was, and it is not uncommon at all that sewers are temporarily overtaxed under these extreme conditions. That frequently happens in the best business and residential sections. I saw it happen in Boston recently (T. 1602). I think any trace of the water, with the exception of possibly some mud deposit on Illinois Avenue, was entirely gone in a period of a few hours.

[fol. 1416] Cost of Reproduction Less Depreciation

Obsolescence

Referring to my testimony where I have spoken of the value of respondent's structural property and equipment, I used that word as meaning cost, either cost of reproduction new or cost of reproduction new less depreciation. I seriously regret the use of the word "value," because, [fol. 1417] ordinarily, our organization is strictly opposed to the use of that word, where I obviously meant figures, appearing in the appraisal either as cost to reproduce new or cost to reproduce new less depreciation. I stated on redirect examination that my cost of reproduction new of this particular property does not reflect either obsolescence or inadequacy because I found neither in this particular property (T. 1615). Assuming that I found a piece of equipment which would cost $2,000 to reproduce new, that is, to obtain the identical thing because that identical thing is not made any more and would be a special job and that I could get the modern equivalent of it for $1,000, as to whether my cost of reproduction new would be $1,000 it

is very hard for me to answer that question for this reason: Seldom, if ever, have I been able to recognize a condition where I would be required to estimate partial obsolescence. If, in any instance, that were recognized, it would be fully explained, the method by which it was handled in the descriptive notes appearing before the appraisal. What I meant to say was that if this occasion did arise, in no case would that obsolescence or partial obsolescence be reflected in the column headed "Cost of Reproducing New Less Depreciation," if it were found in total. In other words, if the item were found to be obsolete, it would immediately be reflected by its absence in the appraisal itself. In other words, the cost of reproducing (T. 1616) new column would not reflect it because it would not be there. If I could recognize the feature of a partial obsolescence, I would reflect it after a full determination of facts and the best information available in that column "Cost to Reproduce New Less Depreciation," but it would be explained in the preceding notes to the appraisal. If I found radiators in a building which were of a rather old type and when I tried to get prices on that type of radiator I found they were no [fol. 1418] longer manufactured and if acquired now would have to be a special job at a special and extra cost, I would not put that special and extra cost in my appraisal. I would use the cost of a modern radiator even though that cost would be less than what it would be to reproduce the old radiator, assuming of course that the leeway which would be taken in that instance from the basic low of reproducing exactly what you find would be the practical equivalent of the item which you were reproducing. I think that all engineers are bound to demand some leeway in that respect, even though possibly the courts have said, in substance, that you must reproduce the property. If you find, however, when it becomes impossible to do that, necessarily the engineer must demand some leeway, and that seems to be the reasonable and the practical way out of it. That is the only sensible thing to do (T. 1618). Assuming that I find in a property which I am called upon to appraise for rate making purposes that the design and layout of the entire property is in my opinion antiquated, has suffered a great deal of obsolescence, and that I could lay out a different property serving the same purpose even better and cost less to construct, my assignment would be

to appraise that property and not to appraise some different property, and that is the property I would appraise. If I found the property was obsolete, I would go to the management and say that I found no useful property to appraise (T. 1620). There would be no property to appraise. I would inventory nothing if it were all obsolete. I don't understand the term "suffering obsolescence" unless you mean the theory of a property becoming obsolete just because of age. Of course, in that respect if anything gets older, according to your terms it develops obsolescence. In other words, it is a lessening of modernity, so to speak, [fol. 1419] but that to my notion is not obsolescence. My idea of obsolescence goes hand in hand with usefulness, since an item is either obsolete or it is not obsolete. If it is obsolete, it has no place in the appraisal of property for rate making purposes. If it is not obsolete it has its function and its place in the operation of the yard, and the rate payer should be called upon to carry the burden of that item. That strictly is my idea of *obsolescence, of a so*-called use of the item of obsolescence when found. There may be individual cases, few and far between, in which the element is found to exist in any entirety, not in its entirety, but what might be termed partial. They are so few and far between that in my experience of appraisal work I have yet to discover one. I must acknowledge that I am not enough of a student of Webster to draw a line between the words "obsolescence" and "obsolete" (T. 1622).

Land Values

Cost of Filling Zone A

CHESTER S. CHURCHILL, a witness called by the respondent, after first being duly sworn, testified in substance as follows:

I live in Chicago and am assistant to the General Superintendent of Swift and Company's plants. I am an engineer by profession, graduating from Brown University, receiving the degree of Civil Engineer in 1896. I was civil engineer employed in the construction of the St. Joseph Stock

Yards from about the beginning and carried through the early part of that construction (T. 1627). The construction was really a joint responsibility between the Superintendent, L. R. Sack, and myself. I was the only civil engineer who had anything to do with the construction of the [fol. 1420] yards. I first came to St. Joseph about August 1, 1897, at that time being in the employ of Swift and Company, and worked in the capacity of civil engineer in laying out the plant and other engineering matters until the present plant of Swift and Company was completed the following spring (T. 1628). Some time in the early part of April, 1898, I went to work for the St. Joseph Stock Yards Company, retaining the position of civil engineer in charge of construction until about July 1, 1900, when I left St. Joseph. A substantial amount of the construction had been completed at that time and they were operating a stockyards in the portion which had been constructed. I have seen the present stockyards since 1900 and I find additional construction that was not there when I left in July of that year (T. 1629). When construction began in 1898 there was a rather small old stockyards in the location of the present sheep pens and occupied some space a little further north and west. When I began work, they had started to do a little filling upon what would be the north end of the present cattle pens and adjoining the old stockyards. No structural work had been begun (T. 1630). I began with the construction of pens approximately at the extension of Missouri Avenue and constructed sheep pens south to somewhere near a point which would be drawn by extending a line from what is known as the hay barns due east. Those were approximately square in area. These particular pens were the last that were built. The cattle pens which were the first construction extended from the sheep pens south to within two double blocks of the Exchange Building. They extended in width from the loading and unloading docks to and including the double alley which runs north and south and which extends approximately from the westerly boundary of the Exchange Building area (T. 1632-3). During [fol. 1421] that time also the two hay barns were built. On the south side of Illinois Avenue the present hog house was constructed from Illinois Avenue down to the present southerly limits of the hog house (T. 1634). In width it was just a little wider than the cattle division to which I pre-

viously referred. The hog division extended to the alley which is almost an extension of the double alley in the cattle division. The additional pens shown west of that single alley in the hog division were constructed at some other time. That is likewise true of the pens on the north side of Illinois Avenue and to the west of the double alley, except that the fill in the area lying between the Exchange Building and the cattle division on which the construction had been finished was put in at that time (T. 1635).

I have placed yellow lines on Government Exhibit No. 103 which approximately incloses the portion of the property I constructed in the years 1898, 1899 and 1900. I have examined the map sufficiently to know the approximate location of what have been referred to as land zones A and B. When I first saw that land and prior to the construction of the stockyards I would call it typical Missouri River bottom land. It was low in some places. I would not exactly call it swampy, but it had that appearance in the spring of the year when it was wet. It was subject to overflow of a large creek down in the south end, and there was a drainage ditch that ran through it for some reason from the south end of the property and connected indirectly to the river. It was necessary to fill this land before we began construction. Most of the fill was clay that came from a location east of the stockyards, called King Hill. I was personally in charge of the filling of this land. As I remember it we paid for the clay by the wagon load, it being carried in old-style hauling wagons that had a body carrying roughly a cubic yard to a load, and my remem- [fol. 1422] brance is that we paid a dollar a yard delivered. The driver did not personally have to dig it up on King Hill at that time. They used horse-drawn railroad scoops and had some men up there and these men dug the clay, and the drivers hauling it had some kind of an arrangement with them so that they loaded the wagons with these scoops through an opening overhead (T. 1638). This price of a dollar included the excavating and loading of the wagons, and unloading at destination where they simply dumped it. The floors of all these wagons were removable two by fours which were simply turned edgewise and the dirt filtered down. Afterwards at the time the pavement was laid, it had to be graded. I would say that the minimum fill under the brick was around two feet. For a con-

siderable part of the area I would say the maximum was around three feet. At some points, I could not say that the area would be so very large, some low points that we graded on that ground, it might have reached over five feet. I don't know as I should mention the dock, but the dock was filled similar to the pen areas, but of course it took more fill because the level of the dock is something over three feet above the pen level. That was all done at the same time, the fill being placed between the retailing walls and the loading dock. I had nothing to do with the construction of the Exchange Building. That was done by an architectural firm in St. Joseph. Eckels was one of the partners. Just that portion of the stockyards on which this construction was placed and the area directly back of the Exchange Building was filled at that time. Of course, on the outside of those areas we would have an embankment there to protect the fill, and that would have carried it out for a few feet from the line of the construction (T. 1640). In addition to the clay we used quite a little ballast, clay ballast as fill when we came to construct the sheep [fol. 1423] pens. We burned that ourselves down at the southwest corner of the stockyards property. It was burned for brick ballast and it was not all used for this purpose and whatever was left over was used in place of some clay in the sheep pens. As I remember it, it was quite a considerable yardage. Practically all of it was in the neighborhood of the sheep pens. I have forgotten what it cost, but as I remember it, it was more expensive than the clay because it had to be burned with coal. We only used it because we had some surplus left over. On top of the clay we placed cinders before paving (T. 1641). There was a six-inch layer of cinders on top of the clay, and in some instances there was more than six inches to level it up. There might have been as much as a foot of cinders in some cases. I do not have any recollection about the cost of the cinders. Most of our cinders come in in cars, but I did not have anything to do with it. I forget just how they were bought. We had a purchase shop down there and I had nothing to do with paying for the cinders.

The basis for determining the level of the stockyards and also Swift and Company's plant was the high-water level of the Missouri River some time in 1881. It is my remembrance that the basement floor levels of the Swift plant and

the alley level of the Stockyards were lined up to be something over a foot above this high-water level. That was the highest they had ever had up to that time. I found the land in Zone A upon which we were going to construct a stockyards to be a lower level than that particular high water level (T. 1642). That was the reason we had to fill it. They did not want another highwater from the Missouri River getting into the basement floor of the plant, and they filled the yards.

Since arriving in St. Joseph several days ago I have gone down to the stockyards (T. 1643). There has been [fol. 1424] considerable area filled in and built on since I was here in 1900. I would say, although I did not examine the whole area, that the part adjoining the old construction has been brought up to the same level. Since arriving in St. Joseph I have had put down some "test holes." Mr. Black, superintendent, had some of his yardmen put down some holes with a tool they call a post digger, down until we went through the filling, and reached the original gumbo surface (T. 1644). Prior to being filled the land was what is commonly called gumbo. It is a kind of bluish black. It is distinctive in appearance as compared to clay which is yellow. It is also distinctive in appearance as compared to burned ballast which is red (T. 1645). The following is a description of the test holes which were dug: The first one, the northernmost hole, is in the sheep sheds, about 200 feet in from the south side of the sheep sheds and 200 feet west from the edge of the loading dock. The second one is just south of the sheep sheds and the cattle pens where we first started construction. It is right on a line with the north line of the north hay barn, and about 200 feet in from the edge of the loading dock. The third test hole is in the double alley that has been referred to, and about midway between Illinois Street and the north line of hay barns. The fourth test hole is a little northeast of the Exchange Building and just west of the chute house at that point (T. 1646). The fifth test hole is in the hog shed. It is about 100 feet north of the south line of Illinois Avenue and about 100 feet in from the edge of the loading dock. Test hole No. 6 is located in the south end of the hog sheds about 100 feet in from the south side and 100 feet west from the edge of the loading dock. These six test holes were all on land where the original construction was made.

The two test holes that were not on land which was filled [fol. 1425] at that time, but which are west of that land, were both dug in Zone A. The south hole, or test hole No. 7, is about 150 feet north of the north line of Illinois Avenue and about 150 feet east of the east line of Packers Avenue (T. 1647). The other one, or test hole No. 8 is also in the west side of Zone A. It is about 250 feet east of the east line of Packers Avenue, and about 500 feet south of the south hay barn. I have marked on Respondent's Exhibit No. 115 the location of each of these eight test holes with a small circle, and also the number of the test hole by which I have described them in my testimony (T. 1648). I have also marked them in the same manner on Respondent's Exhibit No. 114.

The following is the result of my inspection of these test holes. Test hole No. 1, starting with the bottom of the hole and coming up to the top, there was 6 inches of ballast, that is, that burnt clay ballast, 24 inches of clay, 4 inches of cinders, 2 inches of sand to the under side of the brick, total of 36 inches or three feet under the brick, and the brick was on edge 4 inches deep; figuring that .3 of a foot, from the original ground to the top of the brick was 3.3 feet (T. 1649). There was quite a line of demarcation between the burnt clay ballast and the black gumbo. In test hole No. 2 there was 11 inches of burnt clay ballast, 15 inches of clay, and at that point there was no sand. It seemed to have filtered down in the cinders. And brick on edge 4 inches, making a total from the bottom of the hole to the top of the brick of 2½ feet. The line of demarcation between the burnt clay ballast and the underlying black gumbo was likewise easily discernible.

In test hole No. 3 there was 55 inches of clay and 14 inches of cinders (T. 1650). There was no appreciable sand there but that was in the double alley and there was [fol. 1426] a double layer of brick, one flat-ways and one edgeways, making a total brick thickness of 6½ inches, so from the bottom of that hole to the top of the brick was 6.3 feet. It was easy to discern the difference between the clay at the bottom of the hole and the underlying black gumbo. We had to make a larger opening in order to get down to make the measurement, due to the depth of the fill. In test hole No. 4 the line of demarcation between the cinders and the clay was not exactly level. It was

slanting. The total depth of clay and cinders was 39 inches. No appreciable sand, and the clay itself ran from 19 to 24 inches, the balance cinders, and the brick was flat-ways in that particular alley, figuring .2 of a foot, so the (T. 1651) total distance from the bottom of the original ground to the top of the brick was 3½ feet. The clay was at the bottom of the hole and immediately on top of the black gumbo. The line of demarcation was clear.

In test hole No. 5 there were 24 inches of clay, 4 inches of cinders, and 2 inches of sand, making a total of 30 inches, and brick on edge was .3 of a foot there, and that made a total distance from the bottom of the hole to the top of the brick of 2.8 feet (T. 1652). The line of demarcation between the clay and the black gumbo was easy to ascertain. In test hole No. 6 there were 20 inches of clay, 5 inches of cinders, and brick on edge 4 inches, making a total height from the bottom of the original ground to the top of the brick of 2.4 feet. The line of demarcation between the clay and the black gumbo was easy to ascertain (T. 1652). In test hole No. 7 there was 12 inches of clay, 10½ inches of cinders, and 2 inches of sand, making a total of 24 inches, or two feet of the fill and brick on edge, making a total distance from the top of the brick to the original ground 2.3 feet. The line of demarcation between the black gumbo and the clay was easy to discern.

[fol. 1427] In test hole No. 8 there was 39 inches of clay, 9 inches of cinder and 1 inch of sand, making a total depth of 49 inches, plus 4 inches of brick, making a total distance from the top of the brick to the original ground of 4.4 feet. The line of demarcation between the clay and the black gumbo was easy to discern. Four of those test holes were dug Monday afternoon and the other four yesterday afternoon. Mr. Black and Mr. Sack were with me when we inspected the first four holes and Mr. Black was with me in inspecting the last four (T. 1653).

Since arriving in St. Joseph I have examined the original copy from which Respondent's Exhibit No. 113 was made. I heard the testimony of Mr. Leslie as to how he prepared Respondent's Exhibit No. 115 from Respondent's Exhibit No. 113. I have also had occasion to examine Respondent's Exhibit No. 114, and heard Mr. Leslie's testimony about that map. Based upon my examination of these three maps, my recollection of the condition of the land before

I began construction in 1898 and my investigation by means of test holes, it is my opinion that Respondent's Exhibit Nos. 113 and 115 correctly state the elevation of the land of the Stock Yards Company shown thereon prior to the filling of that land by me (T. 1654). I base that opinion on three or four different facts; first, the elevations shown on Respondent's Exhibit Nos. 113 and 115 at the south end, I mean the last elevation shown at the south end on those two maps practically agree with the present-day elevation shown on Mr. Leslie's map, which is Respondent's Exhibit No. 114. I was down there and looked at the ground. It is the original ground except that in a few places a little fill from some open hog pens has washed down there in spots, but it is practically the original surface, so that at that point, anyway, Mr. Leslie's elevations practically agree with the elevations on Respondent's Exhibit Nos. 113 and [fol. 1428] 115. Then Mr. Leslie mentioned this track elevation being approximately the same on his recent survey as shown on Respondent's Exhibit No. 113. Now, third, of course, these test holes that were put down, it is difficult to identify them exactly with the location of the points at which levels were taken, in preparing Respondent's Exhibit Nos. 113 and 114, but working the thing out as nearly as we can, taking any one of these holes, test holes, and adding the distance that we found from the top of the brick to the original ground, adding that distance to the levels shown on Respondent's Exhibit No. 113 brings out a result that is reasonably close to the present-day elevations developed by Mr. Leslie on Respondent's Exhibit No. 114 (T. 1655). My own recollection as to the approximate amount of filling that was placed in there would be of assistance in forming the opinion I have stated. That recollection conforms substantially to the facts as shown by comparison of Respondent's Exhibit Nos. 115 and 114. Respondent's Exhibit Nos. 113 and 115 indicate a series of rather low spots extending almost due north and south and just west of the westerly side of the Exchange building. That had evidently been dug for a ditch at some time to take the surface water out of this area. It was in existence when I came here in 1897, and as I remember it, our construction went about to that ditch and it was left as it was (T. 1656). It was still in existence when I left in 1900.

Cross-examination:

When I spoke on cross-examination of the beginning of the new construction of the St. Joseph Stockyards in 1897 to 1900, it would have been better to have said the construction of the new stockyards, I imagine. There was an old stockyard at the northerly end of this land in Zone A. I [fol. 1429] do not know how long it had been operating there when we started the construction of the new stockyard, except that it had been built a number of years. It was an old stockyard at that time (T. 1657). My remembrance is that it covered a little more than the area now covered by the sheep barn especially to the west and a little north. Up to that time I do not remember whether it was called the St. Joseph Stockyard or the St. Joseph Stockyard and Terminal Company. It was one of those two. There were three small packing plants in existence at that time. They were not the plants that are now operating adjacent to the stockyard. Part of two of the plants are still standing, but they are not operated as killing plants any more. Just north of Swift's plant there was an old plant that is now used for certain manufacturing purposes. The original buildings were formerly part of a packing house called the Moran Packing Plant, and those old buildings are still in existence, and our company killed hogs in those buildings at that plant (T. 1658) while we were erecting a new plant, and the one adjoining to the north, the old Viles and Robbins plant was torn down a number of years ago. I don't remember just when, and the plant to the north was, as I remember it, called the St. Joseph Dressed Beef plant, and part of those old buildings are still standing and used in the way of storage and I think ice making, and so forth. I think the part used for storage and ice-making is now operating in connection with the terminal storage warehouse, but I am not positive about that. It is not Swift and Company. The construction of the Swift plant and the old Morris plant were started about the same time in the late summer of 1897, and they were pretty well along by the following spring when the actual work began on the stockyards (T. 1659). I would say that [fol. 1430] with the two packing plants coming there that the old yards would have been entirely inadequate to handle the amount of stock that would probably come in. I would say that the Exchange Building was completed be-

fore the last of the pens were completed, that is before 1900. The sheep barn was constructed before I left in 1900. It was, as I remember it, almost the last pen construction that we finished. The entire strip of structures, we might say, beginning two blocks north of the Exchange Building, and running to the north end of the present sheep barn, was constructed before I left in 1900 (T. 1660) and in addition to that the hay barns which lie on each side of the St. Joseph Belt Railroad track. The Transit House was constructed later than 1900 according to my remembrance. I am not familiar with when the row of brick horse barns, which are back of the Transit House, were constructed (T. 1661). The structures north of the Exchange Building and including the two hay barns which we have discussed are the same in design of construction as the structures I erected back in 1898 to 1900. I did not look them over yesterday and the day before. I would not undertake to say but what new boards were put in, but there has been no radical change that I could see.

My statement that the clay used in filling the land in Zone A cost, delivered on the job, one dollar per cubic yard, is entirely from my recollection. I have no records, and know of no records unless the Stock Yards Company would have some old records, tally sheets, that they used to keep on each driver, but whether they would be kept over this number of years, I do not know (T. 1662). The paving in the area that I have discussed was built under my supervision. It was placed there at that time. I do not have any recollection of the approximate total cost of the paving or other structures that were erected in the strip under my supervision. It may seem a little odd that I should [fol. 1431] not have those figures. I had a record of them, but I think, if I may be allowed to say this, in those days, why, the general plan was agreed on and we went ahead and did it, and that was why I never got up any prices that I remember of showing the cost of the paving or the cost of the cattle yards or the sheep sheds or the hog pens, I mean, finished figures (T. 1663). I do not know what the total cost was at that time. I was not responsible for the cost of it in any way. Mr. Sack and I had the general responsibility of getting the yards built. We agreed to go ahead and put the fill in, and whether there were some preliminary arrangements made, I do not know (T. 1663), and

I have no recollection of any cost except the cost of the fill. I was not responsible for that. I would say that the company had to pay what it had to pay to put it in. From my standpoint the fill was not different from the structures. Our concern was getting it in and getting the fill made. I never knew what was paid for this land that was filled before the filling was done, and I do not know whether the land was bought about the time we filled it or before that. I never did know (T. 1664). The only thing I knew about it was the cost of our cubic yard of fill. The dock that I referred to our filling was the loading and unloading dock which lies within the strip described and marked on Government Exhibit No. 103. There was a retaining wall on each side of it. I stated the ground in Zone A before I filled it was approximately the same nature of ground as I now find in the south end of Zone B. I think the general level of quite a large part of that area in land Zone A was quite a little lower than the ground to the south. I don't recollect just what it was, but something like a foot perhaps lower. What I refer to would be in a small, relatively small area, but five feet or over in some places,—there was a con-[fol. 1432] siderable area to my recollection that was three feet and over (T. 1665).

The only thing that was done by contract, as I remember, was the brick paving. Piping and sewer, as I remember it, the Stock Yards Company bought the raw materials and we had a regular construction crew in the stockyards that put in the water pipes and the sewers just as well as the superstructures and fences. I do not remember at that time whether the employees were on a day basis or a monthly basis, but they were regular employees. I do not remember what their pay was. It was not on any union scale. There was no union labor at all. I could not say whether the contractor used any union labor in laying the brick pavement. My recollection is that he did not (T. 1666). Referring to the cinders that I spoke of, they were used both as a cushion for the brick paving, and also for filling. I think in all cases that sand cushion was used, but any cinders would vary a whole lot in coarseness. For instance, if the surface was a little coarse that sand after a while would filter down through and lose itself. I would not say that the modern process of filling by pumping the sand or silt at the bottom of the river by hydraulic pres-

sure had been developed at the time the land in Zone A was filled in 1898 to 1900. I don't remember of hearing of it at that time, but I am not sure but that it had been used. Of course, I know that dredging operations were in effect doing that which is a similar situation (T. 1667). I presume it might have been practicable to fill the land in Zone A as it was filled in 1898 by pumping silt from the Missouri River, or whatever material there is. I have not made any study whereby I could estimate the cost of that.

[fol. 1433] Redirect examination:

I would not recommend silt. If there was a sand bar that could be utilized I would say that river sand would make a good fill, but just ordinary fine river mud, I do not know. That would entail an investigation as to the relative merits of the material in the river and the expense as compared to hauling clay from King Hill (T. 1668). At the present time I have made no such investigation whatever. I am speaking absolutely of the experience I had in the past. I do not know that I have ever heard of a case where the cost of filling a piece of land might exceed the filling of the land after it was filled (T. 1669).

L. R. Sack, a witness called by the respondent, after being duly sworn, testified in substance as follows:

Direct examination:

Land Values

Cost of Filling Zone A

I live in St. Joseph, Missouri, and was formerly employed by the St. Joseph Stock Yards as superintendent and general superintendent, beginning with the organization and continuing down until I retired in April, 1932. After Mr. Black came to the yards and he became superintendent, I became general superintendent (T. 1670). I first went with the old stockyards on December 1, 1887. Prior to that I was with the stockyards located at 8th and Walnut Streets, St. Joseph, Missouri, owned by the C. B. & Q. Railroad, holding the position of foreman, and work-

ing for a superintendent whose home and office were in Burlington, Iowa. I was the person located in St. Joseph who was in charge of that stockyards. I held that position for five years, immediately prior to December 1, 1887 (T. 1671), [fol. 1433a] commencing March 1, 1892. The St. Joseph Stock Yards Company was not in existence when I was working for this Burlington Stockyards. The first stockyard at South St. Joseph was completed and opened December 1, 1887. I was the first superintendent that stockyards had. It was located at the north end of the present yards in what is now the sheep division, and directly west of it. The company that operated that stockyards was the St. Joseph Stockyards and Terminal Company. The present company, the St. Joseph Stock Yards Company, was organized about 1896 or 1897 (T. 1674). I can recall the condition of the land under what was the old stockyards before it was filled. It was low and in a swampy condition, with water standing over it in places most of the year, and there were ditches around through it, and, of course, it held more water. The water was not all level in there as there were higher places and lower places, but I would say it was a swampy condition. Before that old stockyards was built it was filled.

The condition of the land south of the old stockyards and where the present stockyards now exists, the cattle division, was low ground, but I would say that the older part of the stockyards was possibly built on a little higher ground than it was off south, but not very much. It was practically all the same thing. I heard Mr. Churchill refer to that land as typical Missouri River bottom land (T. 1673). I would think that was a pretty good description of it. People used to go hunting ducks and snipe down there. They are usually found around water. My recollection is they began to build the present stockyards some time in 1897. That was somewhat prior to the time Mr. Churchill was in charge. We put some improvements and built some yards with the old stockyards, but it was on land west of the present sheep barn, and for that matter, [fol. 1433b] extended the cattle yard of the old stockyards west to take care of it prior to Mr. Churchill's connection with it. I knew Mr. Churchill at that time and recall about when he went to work there. It was substantially at the time he stated he went to work there (T. 1674). I heard

most of his testimony (T. 1675). I heard his testimony that the land upon which they were constructing a stockyards in 1898, 1899, and 1900 had to be filled. The fill came from the hills east of the stockyard. They are commonly known as King Hill. I heard his statement about the approximate depth of the fill. I agree with it. It corresponds to my recollection. I note the yellow lines on Government Exhibit No. 103 wherein Mr. Churchill indicated the location of the stockyards built by him. That is the approximate location of the construction that took place at that time. Additional portions of the stockyards were constructed from time to time after Mr. Churchill left St. Joseph (T. 1676). I was employed by the stockyards during those times. I heard his statement as to a portion of Zone A which he filled. I agree with it. Approximately all of the balance of Zone A was filled except the unoccupied space west of the hog shed. The balance of Zone A would be filled as we would need it from time to time, and that continued from 1900 down to approximately 1918.

I have seen the original map from which the photostat map which is Respondent's Exhibit No. 113 was made (T. 1677). I would say that the first time I saw it was about 1896 or 1897. At that time it was in the possession of the Stock Yards Company. To my personal knowledge it has been in the possession of the Stock Yards Company at least up to the time I left its employ. I put the number 61 on the map which is crossed out at the top. That is my handwriting. [fol. 1434] I was with Mr. Churchill when the first four test holes were being inspected on Monday afternoon. I heard his testimony about these test holes, which statement is substantially correct (T. 1678). From my knowledge of conditions which existed in 1896 and 1897 at the St. Joseph Stock Yards and my knowledge of the map which is Respondent's Exhibit No. 113, I have an opinion as to whether or not that map accurately states the elevation of the portions of the St. Joseph Stock Yards Company's land which are shown thereon. My opinion is that this was the elevation of the land at that time, at the time it was made before the filling was done and any improvements put on it. I was asked by counsel for respondent this fall or winter if I recalled such a map being made at the time of the original construction of the yards, and I said then that there was such a map. I supposed the stockyards still had it. We

then searched for it and found that particular map which is Respondent's Exhibit No. 113 (T. 1679).

Cross-examination:

The old stockyards which was located where the sheep barn now is was owned by local people. At the time the old stockyard was located at that place there was vacant land north of the location like there is today. Part of the land that is north of the location that is north of the present Belt Railroad tracks has been filled. Land belonging to the Stock Yards Company has been partially filled in just a small space north of the Belt Railroad tracks. At the time the old stockyards was put in there in 1887 there were three packing plants in existence in St. Joseph (T. 1680). They were not near the old stockyard. There was one packing plant in the course of construction about that time or shortly afterwards which was near the old stockyard. There was no occasion for a railroad before the old stock- [fol. 1435] yard was built, and there was none there. The Belt Railroad and other railroads came during the process of the building of the stockyards. I could not state why the owners of the old stockyards selected that location. I would not say that it was strange that they picked out a spot like that (T. 1681). I would not say that they picked out the worst spot down there in the whole area in which to locate their stockyard. It was a spot that was chosen, that they thought they could construct a stockyard on, and did. It was typical of the land around it, just a broad general area of land, all about the same kind, and they chose this place for a stockyard. The old stockyard did the same general kind of business that the present stockyards does, that is, it received livestock and handled it for the owners. I was known as superintendent of the stockyard from 1898, when the new stockyards were built, up to the time Mr. Black came, and then I was called the general superintendent. There was a manager for the Stock Yards Company. My position as superintendent was practically the same as Mr. Black's is now. (T. 1682), and I had practically the same duties as Mr. Black has now. I heard Mr. Churchill describe this strip of pens and loading and unloading dock, and so forth, that was built under his engineering supervision. I have had access to old records of that day other than this map. There are a great many of the old records of that construc-

tion still in existence. I cannot say that they are all there. I know where they are practically kept at the stockyards office (T. 1683) in the Exchange Building. I do not have any recollection of what it cost to build the part of the stockyards that Mr. Churchill superintended. I could not even give an approximate figure. I never went into anything like that. That applies to practically all the construction that was done down there while I was connected with [fol. 1436] the stockyards. I did not know the cost. The construction work that was done after Mr. Churchill left was done with stockyard labor like Mr. Churchill described his construction as being done. I would not say that we did not use any union labor because we made no inquiry as to whether a man was a union man. We just employed them without knowing whether they had a union card or not (T. 1684), and paid them the wages prescribed by our company without regard to the union scale. I left the employment of the Stock Yards Company on April 1, 1932. I was general superintendent up to that time. Up to that time there were from time to time structures built on the stockyard. There might have been some building like a scale house let by contract. I am not positive about that. Something like a brick-laying firm, or something like that might have been built, but it would be just a small portion of the thing. Of course, I do not think that was hired by day labor like you would a carpenter or anything like that. It would not possibly have been that way. Other than those possible exceptions we used stockyard labor employed by the Stock Yards Company. I could not say about the union wage scale because I don't know anything about it (T. 1685). As far as I know I did not employ them on the basis of having a union card or paying a union wage scale. As to whether they had a union card or as to whether our scale was the union wage scale, I did not inquire to find out (T. 1686).

Redirect examination:

None of the managers of the respondent are living other than J. O. Barkley and C. F. Topping. I do not know what the union wage scale was during that time, 1896 down to 1932. I never had occasion to know except possibly by hearsay. I do not know whether the wages actually paid [fol. 1437] were union wages or some other wages (T. 1686).

Depreciation Reserve

MR. HENRY J. SAUNDERS, a witness called by respondent, being duly sworn, testified in substance as follows:

Direct examination:

Qualifications.

I am a consulting engineer and statistical analyst at Washington, D. C. I was first employed in the engineering department of the Union Pacific Railroad in 1899 and have continuously practiced my profession during the 33 years since that time. I was graduated from the University of Wisconsin in 1903, with a degree of Bachelor of Science and Civil Engineering. In 1910 the same university awarded me the higher degree of Civil Engineer, after I had presented a thesis on the subject of railroad construction costs.

I was employed on railroad work for the Union Pacific Railroad and on irrigation work for the United States Reclamation Service, and the engineering firms of Arnold and Company of Chicago, and Ford, Bacon and Davis of New York, prior to 1914. I also practiced as consulting engineer in Montana from 1912 to 1914.

In July, 1914, I entered the service of the Interstate Commerce Commission, Bureau of Valuation, at San Francisco, California, first as office engineer, and later as supervising (T. 1687) engineer. I was continuously in the employ of the Commission until November, 1928; the period from 1921 to 1928 being in Washington, D. C.

During the time I was with the Interstate Commerce Commission, both in San Francisco and in Washington, I had charge of all cost accounting work in connection [fol. 1438] with the Bureau of Valuation. During this period I had a number of accountants directly reporting to me who made analyses of costs under my supervision. These included not only costs of construction projects, but studies of operating and maintenance expenses. All this work necessitated intimate knowledge of the various Interstate Commerce classifications of accounts and the proper separation of charges as they appear in the carriers' books.

During the period 1922 to 1928, I appeared as the Commission's witness with respect to cost and valuation matters in over 100 hearings. During the 14 years I was with the Interstate Commerce Commission, as a part of my duties I was called upon to fix the condition of railroad property and to determine service lives to be used in figuring the straight line depreciation adopted by the Commission in its valuation reports. This study of service lives included much original investigation not only from carriers' records, but from the records of all available studies. Much time was spent by me in analyzing and tabulating service-life statistics developed by laboratories and Government agencies. These related to all forms of materials, including those generally used in stockyards (T. 1688). Subsequent to 1926, the Interstate Commerce Commission issued its proposed order in Docket 15,100, Depreciation Charges of Railroad Companies and Docket 14,700, Depreciation Charges of Telephone Companies, and I was assigned by the Director of Valuation to the hearings in these cases. I attended all of the hearings and prepared memoranda and questions for the use of the Commission attorney. I also prepared voluminous exhibits relating to this accounting depreciation, that is, exhibits dealing with service lives and other factors.

Since 1928, in my consulting practice, I have frequently [fol. 1439] been called upon to advise carriers as to depreciation accounting and in one or two instances advised as to the compliance with the Commission's order in this depreciation docket which was later suspended.

I have been engaged as consulting engineer and analyst since November, 1928, specializing in railroad and utility matters and have appeared before the Interstate Commerce Commission in over 30 cases relating to valuation and recapture of excess earnings.

I also appeared for Swift and Company and other packers in the Eastern Livestock cases, Docket 16,746, where I presented an analysis of the various cost exhibits relied upon by the railroad.

I was retained by the Public Utilities Commission of the District of Columbia in connection with the valuation of the Washington Gas Light Company; by the U. S. War Department, in the (T. 1689) Bonnet, Carre, Spillway Case before the U. S. District Court of Louisiana; by the Gandy

Bridge Company of St. Petersburg, Florida. For this latter, which is a five million dollar toll bridge, I not only made an appraisal of the property for rate making purposes, but also prepared certain accounting adjustments for consideration of the Florida Railroad Commission which were adopted by that Commission as a basis for the Gandy Bridge Company's restatement of its account.

It has been necessary in all of my railroad work to analyze the carriers' accounting records and apply the Commission's various accounting classifications.

In my consulting work, I have advised carriers as to the accounting procedure and have conferred many times with the Interstate Commerce Commission's Bureau of Accounts and the Accounting Section of the Bureau of Valuation with respect to interpretations of the Commission's orders to carriers (T. 1690).

[fol. 1440] I have recommended various adjusting entries for these carriers and have prepared accounting reports, such as the annual recapture reports to the Bureau of Finance and returns to the Commission Valuation Orders 3 and 25. I have also assisted many carriers in the preparation of certain parts of their annual reports to the Interstate Commerce Commission, Bureau of Statistics. I have used the annual statistics reports of certain carriers and the Commission's reports of statistics of railways many times in connection with my cost study. I have also developed statistics from other agencies than the Interstate Commerce Commission, such as the Bureau of Railway Economics, the Department of Labor, the Department of Commerce, and other sources of statistical information in Washington. I have written several articles for magazines, such as Engineering News, Traffic World, and Railway Age, relating to valuation subjects. The Engineering News of June, 1927, published an article by me on the subject of depreciation. I have also given addresses upon valuation matters before the Washington Society of Engineers, the engineering students of the University of Wisconsin, and George Washington University. It has been a part of my duty at all times to keep informed upon valuation subjects, and I have endeavored to read all current articles and comments upon court decisions, as well as reviewing a great deal of the literature available in the Library of Congress. I consider that I have made as

thorough a study of the theories of valuation as it has been practicable to do. I am a member of the American Society of Civil Engineers, and the Washington Society of Engineers (T. 1691).

I have no connection with respondent, other than my employment in this case. I have been asked by respondent to make an independent investigation on the question [fol. 1441] of depreciation reserve which should be allowed in this case. I have done so. I was given a free hand to make an entirely independent investigation. No one has asked me to change any of my conclusions. These conclusions that I am presenting are the result of my own independent investigation (T. 1692). All the records I used were either examined by me personally or furnished to me by respondent. I have also examined respondent's property.

General Discussion of Depreciation

In my experience as an engineer I have made a particular study of the subject of depreciation. During the past 18 years, since my first association with the Interstate Commerce Commission, I made numerous statistical studies of service lives of property, to determine, for the purpose of valuation accounting or expert testimony, the actual experience with respect to total useful life of certain engineering construction materials. These have included lumber, masonry, steel rails, structural steel, cross ties, brick, cast iron pipe, and numerous items of less importance. Also, in the course of my work, I have made many comparisons of the accounting for depreciation, with its statistical studies of service life just referred to. I recall one particular instance in connection with the valuation of the properties of the Washington Gas Light Company. Certain data, with respect to the retirement of gas meters, was studied to ascertain the normal service life, and the comparison with the Gas Company's account for a uniform retirement allowance for these meters. I have also advised certain railroads with respect to accounting procedure in connection (T. 1693) with their compliance with the Commission's order for depreciation accounting, known as Docket 15,100.

Beginning very early in my career as an engineer, I have [fol. 1442] made studies of the subject of depreciation, in-

cluding a perusal of court decisions, tax books and numerous magazine publications on the subject. Beginning in 1914, when I went in the Interstate Commerce Commission, and up to the present time, I have continually made a very comprehensive study of this subject.

It should be understood that in defining depreciation I am talking in general terms, but in the course of my testimony, in order that there may be no confusion, I wish it clearly understood that the depreciation I am discussing, unless I make an exactly contrary reference, refers to the necessary accounting procedure rather than the depreciation determined in valuation. I mean the depreciation determined by inspection as described by previous witnesses here. One author has described depreciation as "expired capital outlay," which means that part of the total usefulness of a definite item of property has been used up in the service of the public. The generally accepted definition of "depreciation" is the lessening of value or worth. In some instances, it has been held that as (T. 1694) long as a plant is in good operating condition and giving substantially as good service as a new plant, there is no accountable depreciation. In those cases, the character of the service measures the depreciation instead of the loss of value or worth. In accounting, the sum set aside to represent the real lessening of value or worth of the property may be more or less than the visible or apparent depreciation observable to the naked eye. In any method of accrued depreciation, the ultimate importance is that there shall be included in the earnings, the whole value of the property unit by the time it ceases to exist, omitting from consideration, of course, any scrap value. The straight line method of depreciation provides for this limit 100 per cent accrual, strictly, but the sinking fund annuity or [fol. 1443] compound interest method provides a smaller sum, and the total, or 100 per cent value, is obtained by assuming that the annuity will be invested or it will earn interest, and that this interest, plus annuity itself, will ultimately reach 100 per cent investment. Definitions approved by the courts generally distinguished depreciation from current repairs (T. 1695), for instance, in Cumberland T. and T. Company v. City of Cumberland, 187 Federal 637, 653, the following definition was accepted: "Depreciation may be defined as the loss in value of some de-

structible property over and above current repairs." Similarly, i nPeople ex. Rel. Jamaica Water Supply Company v. Tax Commissioners, 196 New York, 39, 57, it was described as the "Constant deterioration of a plant which has not been made good by ordinary repairs" (T. 1696). The two main groups of causes of depreciation are those which are due to physical change which generally can be foreseen with some degree of accuracy, and those which are functional and cannot be foreseen in the sense that we can determine exactly when they will occur. The physical causes are those due to use and the passage of time and exposure to the elements. These produce the wear and tear of the property. The functional causes include those due to obsolescence, inadequacy and accident. We know that there are such causes continuously imminent, but we never know the exact time that such cause for depreciation may occur. From the standpoint of accounting for depreciation, we must be prepared to adequately protect the investment against any of these causes which I have mentioned.

Depreciation was recognized in England by the Customs and Inland Revenue Act of 1878. In this country, certain court decisions as early as 1863 mentioned accounting for depreciation. However, as early as 1909, the United States [fol. 1444] Supreme Court in the City of Knoxville v. Knoxville Company, 212 United States 1, held (T. 1697): before coming to the question of profit at all the company is entitled to earn a sufficient sum annually to provide not only for current repairs but for making good the depreciation and replacing the parts of the property when they come to the end of their life. The company is not bound to see its property gradually waste without making a provision out of earnings for its replacement. It is entitled to see that from earnings the value of the property invested is kept unimpaired so that at the end of any given term of years, the original investment remains as it was at the beginning." The preponderance of the court decisions since the Knoxville case is that the depreciation allowance should include accrued and actual depreciation, as well as a provision for obsolescence, inadequacy and other functional depreciation. In as recent a case as the United Railway and Electric Company v. West, 280 United States 234, the Supreme Court of the United States said: "one

of the items of expense to be ascertained and deducted is the amount necessary to restore property worn out or impaired so as continuously to maintain it as nearly as practicable at the same level of efficiency for the public service. The amount set aside periodically for this purpose is the so-called depreciation allowance."

The Interstate Commerce Commission in its 1914 classification of accounts made definite provision for certain depreciation accounting, and in so far as equipment is concerned, the requirements of the Interstate Commerce Commission with respect to depreciation have been very definite. In 1923, the Interstate Commerce Commission began a long (T. 1698) series of hearings in Dockets 15,100 and 14,700 with the object of providing definite depreciation [fol. 1445] accounting for all railroad and telephone property (T. 1699). The final order of the Commission was dated July, 1931, but at the present time, the order has not yet become effective. The principles are, however, definitely established with the straight line method and the group system of depreciation accounting definitely adopted. The carriers came before the Commission with the request that owing to the difficulties of installation of the necessary accounting, they would require some time, until January, 1934, before they could effectively adopt this order, and the Commission granted that request.

Necessity for Depreciation Accounting

At the outset we must concede, as so clearly stated by the courts, that during the service life of its property, the company is entitled to "see that from earnings the value of the property investment is kept unimpaired." The depreciation and ultimate retirement of component units are unpreventable. Therefore, such costs become a (T. 1700) part of operating expenses, regardless of accounting methods used in making changes. If there has been no reserve, the retirements represent an economic loss to the investor. Regardless of whether or not, in accounting depreciation, charges are made and resultant reserve set up, the company must procure out of its assets sufficient funds to make all necessary replacements for parts of its property, as they are retired from service, either from worn out condition, obsolescence, or by accident. It remains, therefore, to de-

termine what is a fair method of setting up the depreciation reserve in the accounts of the particular company.

Methods Used in Depreciation Accounting

In accounting, three principal methods have been used; one, to charge the entire cost of any new unit of property [fol. 1446] directly to operating expenses; two, to charge the retirements of any old item of property directly to operating expenses; and, three, to equalize the annual charge to operating expenses by spreading over the estimated service life of such component unit annually its yearly proportion of the installation cost. The third method was adopted by the St. Joseph Stock Yards Company, because, so far as humanly possible, it allocates to each year its proportionate expense of all costs for retirement or replacement. The depreciation reserve is an accounting feature to show the annual spread of these expenses (depreciation), and the resultant net accruals.

Since these spreads are based on estimated service lives, it follows that on some units the charge or spread will be excessive, on others, insufficient; but it is believed that the average obtained is (T. 1701) fairly accurate, and, as data is obtained from time to time, the spread is checked up, and, if necessary, corrected on some of the units terminated. The depreciation reserve in itself is a measure of the economy of the operation of a property, and the adequacy of the rates. The principal accounting reason for the reserve is to clear the cost of large unit retirements which would be too large to charge to any one year's operating expense. Since the operating expense account is not available, some substitute must be obtained, and "depreciation reserve" is that substitute.

Comparison of Straight Line and Sinking Fund Methods

Some years ago, the American Society of Civil Engineers, of which I am a member, presented a voluminous report by one of its special committees on the subject of valuation for rate making. In that report, the committee gave the following definitions for those two methods for setting up depreciation:

[fol. 1447] "Straight Line Method

"This method makes provision from the earnings for equal annual depreciation allowances of such size for any

property unit that the sum of the allowances without interest will equal the cost, less salvage, of each unit when it reaches the end of its estimated service life. The annual depreciation allowances by this method are each equal to the cost, less salvage, of the property unit, divided by the number of years of its expectation of life (T. 1702).

"Sinking Fund Method

"This method makes provision from the earnings for equal annual depreciation allowances of such size for any property unit that if these allowances are invested in a sinking fund, they will, with accumulations of interest, compounded annually, amount to the cost, less salvage, of the unit at the time when it reaches the end of its estimated service life."

My experience leads me to concur in the definitions I have just been giving, which were made by a committee of the American Society of Civil Engineers.

The Interstate Commerce Commission, in its first order in Docket 15,100, dated August 23, 1923, gave a comparison of the sinking fund method and the straight line method as follows:

"Sinking Fund Method

The sinking fund method, like the annuity method, involves complicated interest computations. It also recognizes a uniform annual charge to operating expenses, but its application requires that the annual allowance shall be actually set aside in a special fund only invested in approved securities which, with interest compounded, shall, during the life of the depreciating property, accumulate a sum equal to the service value. As in the annuity method, the rate of interest (T. 1703) is one of the controlling factors in determining the annual charge. It is necessary to find a sum which will, when added to the interest accumulations, equal the service value at the expiration of the period. It should be remembered, however, that under the [fol. 1448] annuity method the interest is hypothetical, while, under the sinking fund method, the interest may be actually earned. The sinking fund increases not merely by the contributions but by the interest accumulations of these

contributions and it, therefore, follows that the longer the sinking fund is in operation, the larger the interest accumulations will be. At first thought, it may appear that the direct cost of maintaining such a fund grows smaller with the increase in the number of years, but the fallacy of this is apparent when it is remembered that the contributions to the fund are wholly withdrawn from the business where they might be employed at a greater profit than could be reasonably expected from the sinking fund. However, under the sinking fund method, the interest accrued is applied to reduce the loss of property consumed in operation which otherwise is chargeable to operating expenses."

The reference is I. C. C. Docket 15,100, order of August 23, 1923, pages 23 and 24 (T. 1704).

"Straight Line Method

The straight line method provides for an equal and constant annual charge representing depreciation or the loss of property consumed in operation to operating expenses, which, in the aggregate, is equivalent to the service value of the property or to as much of that value as has expired when the property is retired. It is the simplest of all suggested methods. It is based on the principle that each year of life of the depreciating property should bear its prorata share of the loss in service value. The resultant charge to operating expenses in each year of the service life of the property, therefore, represents its theoretical proportion of the accruing depreciation."

That is taken from the same pamphlet of August 23, 1923, page 25.

[fol. 1449] Computation of Annual Depreciation Allowance for Respondent

In fixing service lives of property, it is always necessary to assume that such property receives all necessary running repairs. In other words, a wooden building, with an assumed service life of 20 years, would, of necessity, receive several paintings within that time. If it did not, the assumed service life of 20 years at 100 per cent (T. 1705)) efficiency would be too long. In the case of the St. Joseph

Stock Yards, we have before us the service lives, as determined by the Government engineers, who inventoried the property, and it should be noted that, as a whole, the composite expected life is approximately 24.8 years. That is taken from Government Exhibit No. 114.

We know that this life could not be attained if the property was not kept to a 100 per cent state of operating efficiency, by means of necessary maintenance and repairs. At this time, I might refer to an exhibit I have prepared which shows, among other factors, the extent of the annual repairs and the percentage which the cost of such repairs bears to the investment for the St. Joseph Stock Yards (T. 1706). Repairs are found in columns 7 and 8 of Respondent's Exhibit No. 116. It will be noted that I have also shown the principal investment accounts of the company, exclusive of land, for each of the years from 1922 to 1931 (T. 1707).

Under the term "Outside real estate and buildings" I have included property shown on the company's books, which included Exchange Building, farm department, alfalfa barns, horse and mule division barns, sheep division barns, the Transit House and various miscellaneous structures and facilities. The classification conforms to that which I found the company had adopted in its records. In "Outside real estate and buildings" are included certain [fol. 1450] property which was found by the Secretary to be used and useful in the first decision in this case.

Equipment as described in my exhibits included such items as autos, horse wagons, tractors, certain hotel furnishings, Exchange Building facilities, fire protection and office furniture and fixtures. As indicated on Respondent's Exhibit No. 116, that is the property which the Stock Yards Company has classified under accounts numbered 62 to 73 (T. 1708).

Under the term "Stockyard Buildings and Improvements" I have included the cattle, hog and sheep chutes and the various pens in the stockyards division. I also included the yard buildings, scales, water mains, sewers and other facilities, besides a large number of minor structures included in what is known as the stockyards area. That property is now listed by the Stock Yards Company under its account No. 75.

The columns 7 and 8 which I have previously referred

to on Respondent's Exhibit No. 116 show the annual charges for repairs for each of the years 1922 to 1931, inclusive, and the per cent which those repairs bear to the investment in the same property. The percentage shown in column 8, in 1931, was a minimum of nine-tenths of one per cent. The maximum was reached in 1926, when 2.03 per cent represented the repairs. In my opinion, if the repairs had not been made to the extent noted, the ultimate service life of the property would have been materially shorter and either operating expenses or depreciation charges would have been considerably larger due to necessary retirements. In discussing the relation of repairs to depreciation, attention should be directed to the fact that the labor item of a repair generally is proportionately higher for the replacement of property than it had been for the same property at the time [fol. 1451] of new construction. For this reason it is more significant to (T. 1709) compare the relation of the cost of materials used in repair to the investment cost of the same materials.

Data for Respondent's Exhibit No. 117 was taken from the inventory prepared by Mr. Kosters and included in this record as Respondent's Exhibit Nos. 111 and 111-A. My exhibit shows this inventory separated as between labor and materials, and gives the percentage relationship of labor and material to the total cost. Using this estimate of the cost of materials as a guide, I have compared the actual cost of the materials used in repairs with these costs (T. 1710).

In Respondent's Exhibit No. 118 I have used Government Exhibit No. 121-A, to show the cost of materials used in repairs 1927 to 1932. The figures used will be found on pages 254, 257, 260, 263, 266, 269, 272, 274, and 277 of Government's Exhibit No. 121-A. These figures I have shown in columns 2 to 7, of Respondent's Exhibit No. 118. Attention should be directed to the fact that there are included in these costs so-called miscellaneous charges not strictly defined as materials. In other words, I found that the Government audit classifies as material, charges which had been paid to a contractor where the contractor furnished both labor and material, and similar instances where the entire expenditure was not for the material. In column 8 I have shown the material taken from the 1932 inventory as appearing in Respondent's Exhibit No. 117. In columns

9 to 14, I have shown the per cent which the material used in repairs bears to the cost of the same material in the inventory during these years 1927 to 1932. It should be noted that on the average for the property as a whole, the cost of material used in repairs was approximately seven-tenths of one per cent of the material in the inventory. At this [fol. 1452] rate, therefore, it would (T. 1711) take 143 years to completely replace the material in the property by means of repairs. The exhibit further illustrates the striking difference between cost of the material used in repairs and the total cost of repairs, whereas if we compare the figures in columns 9 to 14 in this exhibit with the total figures in column 8 of Respondent's Exhibit No. 116, we note that according to Respondent's Exhibit No. 116 the percentage relationship of repairs to investment was, in all cases, more than twice the percentage relationship of the material used in repairs and the material contained in the inventory. In accordance with Respondent's Exhibit No. 117 we see that the material represented about 69 per cent of the property inventoried.

In Respondent's Exhibit No. 119, which is similar in form to Respondent's Exhibit No. 118, I have taken the actual charges on the company's books for materials and supplies, and have related these charges for the 1932 inventory. This exhibit will differ from the figures shown in Respondent's Exhibit No. 118 for the reason that the Government audit includes all the miscellaneous (T. 1712) charges under the heading of material. The percentage relationship shown in columns 9 to 13, is, of course, much less than the percentage relationship shown in columns 9 to 14 of Respondent's Exhibit No. 118, which serves to illustrate the minor significance of the repairs installation as depreciation charges. Adopting for the moment the extreme theory, with which I disagree as a matter of principle, that all repairs should be included with depreciation charges, where a reserve is maintained, it is apparent from these exhibits that only material charges should receive consideration under a theory of that kind. On such a basis the depreciation charges, plus materials used in repairs, with a fair installation cost added, would then represent the de- [fol. 1453] preciation accrual. A further reason for not including current repairs with depreciation charges is found by studying the percentages on these exhibits. In the

inventory as shown by Respondent's Exhibit No. 117, the material varies from 51 per cent to 84 per cent of the total cost, with an average of 69 per cent.

In the repair items as shown by Respondent's Exhibit Nos. 116, 118 and 119, the materials in the total repairs vary from 24 per cent to 30 per cent in Respondent's Exhibit No. 118, and from 12 per cent to 23 per cent in Respondent's Exhibit No. 119. It is apparent, therefore, that the labor cost of repairs should not be used to extinguish the depreciation reserve made up of accruals upon a proportionately less investment cost of labor (T. 1713). Respondent's Exhibit No. 116 shows a very uniform accrual for depreciation from 1922 to 1931, and while the investment account has increased to some extent, the depreciation charges have remained remarkably uniform. As noted above, the purpose of the reserve is to take care of retirements and replacements and I call attention to the figures in column 10 of Respondent's Exhibit No. 116 which show the per cent which retirement bears to investment. These are not much in amount, but as shown by the exhibit they are facts which must be faced. As was well stated by the Supreme Court, the cost of these replacements is an item which the company is entitled to recoup from earnings (T. 1714).

Respondent's Exhibit No. 120 shows by the principal accounts of the company the charges each year to operating expenses for depreciation, the adjustments to the reserve are not included in this exhibit. It will be noted that prior to 1923, depreciation charges were on a different basis than subsequent thereto. At this time the company went [fol. 1454] under regulation and also adjusted its accounts in accordance with a new inventory. As shown by Respondent's Exhibit No. 116, the total retirements in 1929, which was the maximum year, reached 2.25 per cent of the total investment. The total depreciation accrual in that year was only 4.81 per cent of the investment. The accrual for outside real estate and buildings was 3.78 per cent, whereas the retirements amounted to 4.49 per cent. Similarly, in 1927, the retirements of outside real estate and buildings amounted to 5.90 per cent, whereas the depreciation accrual amounted to only 3.87 per cent. These may be termed the peak condition of a comparison of retirements to accrued depreciation, but such condition must always be antici-

pated and met, and it is futile to assume that during the period of record we have as yet encountered the maximum retirements. The two important factors with respect to retirements which may affect this case are the retirements due to Governmental requirements, and due to economic conditions. The first of these would hardly be classed as obsolescence, although the second is clearly obsolescence. In the order of the Secretary of (T. 1715) Agriculture, dated July 20, 1931, it is my understanding that it was proposed to eliminate from the rate base of this company two principal items described in brief as the southern cattle division, and the horse and mule division. Under this order, it is my understanding that the Secretary found this property no longer used and useful. The use of the southern cattle division had been discontinued as such under a previous order of the Secretary and the use of the horse and mule division as such was curtailed due to economic conditions.

In Government Exhibit No. 114, the southern cattle division is given a reproduction new value as of 1932 of $41,696, and the horse and mule division is given a reproduction new [fol. 1455] value of $142,295. The investment account for these items of property is much higher. In the present case, witness Christensen also recommended the elimination of certain property as not used and useful, which was not excluded in the former decision of the Secretary. This included $157,930 of physical property and $72,693.40 of land value consisting of the packers' storage pens, packers' stock driveway, packers' new stock viaduct, one-half of Packers Avenue, commission officers in sheep division, and the Transit House. From this property, no independent revenue could be derived, if it were eliminated from the stockyards' used and useful property. There is no dispute as to the ownership of this property, nor to the fact that it is used by the Stock Yards Company. Therefore, the classification of this property as not used nor useful (T. 1716) by the Secretary virtually forces its retirement. In Respondent's Exhibit No. 121 I show the cost of retirements classified as between those due to accident, those due to obsolescence and inadequacy, and those due to wear and tear. I also show the total retirements not replaced. Under each of the headings of this exhibit, I show the percentage which each class of retirements bears to the total investment, and, similarly, the percentage which it bears to the total retirement. In the

exhibit I show that between 1922 and 1931, $46,177 of property was retired and not replaced. If the Secretary's order with respect to the classification of the southern cattle division and the horse and mule division is sustained, this property should also be classed as property retirement and not replaced, and a suitable depreciation entry should be made for that form of retirement. If the further recommendations for elimination made in this case are approved, this retired property should be similarly classified. The (T. 1717) public should pay for the retirement through [fol. 1456] rates and the accounting should include it as an ultimate charge against income. Under the group system of accounting, items such as these would go into any depreciation reserve already accumulated. It is apparent, therefore, that is a study, such as I will later present, we should include retirements such as these to accurately reflect what has taken place with respect to the depreciation reserve. This certainly emphasizes what the Supreme Court has said respecting the protection of the investment against impairment. It will be noted that as of 1931 the record of the ten years of retirements shows that 17.86 per cent of the retirements were due to accident such as fire; 30.12 per cent represented property either obsolete or inadequate; 52.02 per cent of the property retired was worn out or otherwise rendered unserviceable. It should also be noted that of the total investment, only 1.67 per cent of the property was not replaced and that this retired property represented 25.28 per cent of all retirements (T. 1718).

The figures in Respondent's Exhibit No. 122 are true and correct statements of the records of respondent as shown in its books of account, except in the percentage requirements, and so forth, that have been figured by me. In this exhibit I have taken the recorded accounting from 1922 to 1931, inclusive, and have shown the three principal subdivisions of the investment accounts. I have shown in column 4 the recorded investment of the property retirement in each of the years, and in column 5 the accrued depreciation on that property up to the date of its retirement. Column 6 shows the percentage which this accrued depreciation bears to the actual investment in that particular property. The important fact with respect to this column is that the depreciation accrual shown does not equal the investment. Columns 7 and 8 show the net loss and percentage

[fol. 1457] loss which the retirement of the property represented, when compared with the amount of depreciation accrued. In columns 9, 10 and 11, I show the complete accrual of retirements and the corresponding depreciation from the year 1922 to the year 1931, inclusive. As will be noted from the last figure in column 11 on sheet 2, over this period of ten years, the retirements were actually covered by the depreciation accruals to the extent of 56.96 per cent at the time of retirement (T. 1719).

Respondent's Exhibit No. 123 is a true and correct statement of what it purports to show. This exhibit shows both repairs and retirements accrued from 1922 to 1931, with a percentage comparison to the total investment. Similar to my preceding exhibits, I have shown the three principal subdivisions of the investment account. It should be noted that in the year 1931, 6.62 per cent of the total property had been retired and that the cost of repairs in the same period had amounted to 15.05 per cent of the total investment (T. 1720).

Respondent's Exhibit No. 124 is similar in form to Respondent's Exhibit No. 123 but differs in that it compares the total amount of depreciation actually accrued on property retired with the total accrued depreciation reserve. Column 4 of the exhibit shows the accrued depreciation reserve on all property. Column 5 shows the amounts which represent debits to this depreciation reserve due to retirement of property. It should be noted that the initial accrued deductions for 1922 represent the total of all recorded debits up to the date of the appraisal and adjustment in the company's accounts. The total of all deductions as shown in column 10 for the year 1931 of 7.07 per cent, when compared with the total on Respondent's Exhibit No. 122 of 56.96 per cent, indicates that, if depreciation accruals had been made on an adequate basis for this property re- [fol. 1458] tired, approximately 12.5 per cent would represent the total deduction from the depreciation reserve. At this point it should be noted that the accrued depreciation reserve shown in column 4 and (T. 1721) accrued deductions in column 5 for the year 1922 represent accounting prior to January 1, following the passage of the Packers and Stockyards Act, and thus prior to any possible regulation. It seems that the comparison, therefore, of any ac-

counting carried on prior to a lawful order fixing rates would have no great relevancy (T. 1722). Considering the matter of retirements, the exhibits I have offered show that in so far as the past experience of the company is concerned, the assumed service life upon which the existing accrual for depreciation is based has not been reached at date of retirement. That is the company's actual experience to date.

The comparative weakness of the sinking-fund method may be illustrated by the following hypothetical case: Upon the straight-line basis, without salvage, for each $1,000 of investment for a 10-year service life we would accrue $100 per year depreciation. Under the sinking-fund method, assuming that the reserve will earn 5 per cent, the annual accrual would be $79.50, chargeable as an operating expense, plus whatever compound interest is earned. If our assumption of service life was in error, and the property was retired for any reason in 8 years instead of 10 years, the straight-line basis would have shown $800, or a deficiency of only $200 below the $1,000 value; whereas, the sinking-fund method would have shown $636, or a deficiency of $364. The error in assumption of service life was only 20 per cent. Now, in theory at least, the funds accrued under the sinking-fund method were supposed to bring in a return of 5 per cent compounded annually. On this basis, the total fund at the end of 10 years would be [fol. 1459] $1,000, but at the end of 8 years, it would be $759.15, or a deficiency of $240.85. The basic difficulty, however, with respect to the (T. 1723) sinking-fund method is the assumption with respect to the earning capacity of the fund. It is impossible to predict how much the fund will earn or at what rate of interest it may be invested. In this case, the company's experience with respect to retirements to date does not justify the use of the sinking-fund method. In Respondent's Exhibit No. 125, I have assumed a total investment of $1,000 and a 10-year service life. On the straight-line basis, the annual charge for depreciation, as shown in column 3, would be $100. On the sinking-fund basis, I have made three assumptions as to the interest which the fund would earn, that is 6 per cent, 5 per cent, or 4 per cent. The annual charges which will appear as operating expenses are then shown in columns 4, 5, and 6, respectively, to be $75.87, $79.50, or $83.29. The interest

which the sinking fund has to earn in order to meet the total requirements of depreciation is shown for the respective rates in columns 7, 8 and 9. The total accrued depreciation on the straight-line basis and the accrued depreciation charged, plus (T. 1724) assumed interest earned on the sinking-fund basis, at the different rates, are shown in columns 10 to 13, inclusive. It should be noted that on either basis the total accrued depreciation plus the interest reaches $1,000 at the end of the 10th year. But it should be further noted that the sinking fund accrual with any of the rates of interest assumed is always below the accrued depreciation on the straight-line basis, that is, up until the 10th year. Thus for any property retired before its service life has expired, there will be a greater deficiency in the accrued depreciation reserve under the sinking-fund basis than there will be under the straight-line basis. That is exactly what has happened with all the retirements of record for the St. Joseph Stock Yards.

[fol. 1460] RESPONDENT'S EXHIBIT No. 125

Statement Showing Typical Comparison of Progressive Depreciation Accruals Under the Straight Line and Sinking Fund Methods

(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)	(11)	(12)	(13)
Year	Total Investment	Annual Charge				Interest On Sinking Fund			Total Accrued Depreciation Including Sinking Fund Interest			
		Straight Line	Sinking Fund						Straight Line	Sinking Fund	Sinking Fund	Sinking Fund
			6%	5%	4%	6%	5%	4%		6%	5%	4%
1	$1,000.00	$100.00	$75.87	$79.50	$83.29	.....	.....	.....	$100.00	$75.87	$79 50	$83.29
2		100.00	75.87	79.50	83:29	$4.55	$3.98	$3.33	200.00	156.29	162.98	169.91
3		100.00	75.87	79.50	83.29	9.38	8.15	6.80	300.00	241.54	250.63	260.00
4		100.00	75.87	79.50	83.29	14.49	12.53	10.40	400.00	331.90	342.66	353.69
5		100.00	75.87	79.50	83.29	19.91	17.13	14.15	500.00	427.68	439.29	451.13
6		100.00	75.87	79.50	83.29	25.66	21.96	18.05	600.00	529.21	540.75	552.47
7		100.00	75.87	79.50	83.29	31.75	27.04	22.09	700.00	636.83	647.29	657.85
8		100.00	75.87	79.50	83.29	38.21	32.36	26.31	800.00	750.91	759.15	767.45
9		100.00	75.87	79.50	83.29	45.05	37.98	30.70	900.00	871.83	876.63	881.44
10		100.00	75.87	79.50	83.29	52.30	43.87	35.27	1,000.00	1,000.00	1,000.00	1,000.00
Total		1,000.00	758.70	795.00	832.90	241.30	205.00	167.10				

[fol. 1461] Respondent's Exhibit No. 126, consisting of two sheets, the first showing stockyards buildings and improvements, and the second showing outside real estate, is a statement of retirements agreeing with Respondent's Exhibit No. 123 (T. 1725). Column 1 shows the description of the property retired; column 2, the recorded investment in that property; column 3, the year of retirement; column 4, the rate of depreciation which was used from 1922 to the date of retirement; column 5, the actual years of service subsequent to 1922; column 6 shows the assumed service life on the basis of the rate used; column 7 shows the annual charge on the straight-line basis; column 8 shows the annual expense charge on the sinking-fund basis; column 9 shows the difference each year between the two charges; column 10 shows the total accumulated accrual on the sinking-fund basis, including the 6 per cent assumed earning of the fund compounded annually from 1922 to the date of retirement; column 11 shows the accumulated accrual on the straight-line basis from 1922 to date of retirement; and column 12 shows the deficiency after comparing the two methods. It should be noted that if 5 per cent compound interest was used, the deficiency would be somewhat greater. It should also be noted that in no instance does the sinking fund basis, plus interest, equal the straight-line accrual. This is a very strong argument in favor of the straight-line basis, since there is never any assurance that the sinking fund will be invested so as to earn even the interest assumed.

In the course of my experience as an engineer, it has been my duty to inspect the physical property of certain companies for the purpose of determining service lives and depreciation reserve (T. 1726). I have made such an inspection of the property of respondent (T. 1727). I have also studied the records which I submitted in the form of [fol. 1462] exhibits in this case to determine the facts actually experienced with respect to the life of this property. The exhibits which I shall presently offer show rates of depreciation based upon assumed service life. All property having similar service life I placed in separate groups. Thus, under the heading of outside real estate, I grouped together all brick buildings upon which I have estimated an average service life of 50 years. The respondent in its previous accounting, used 33⅓ years. Mr. Henrici in Government Exhibit No. 114 has used 40 years for the principal

structures in this group. The most important building in the group is the Exchange Building, and it has already reached an age of 34 years. Normal repairs to this building have generally averaged about one per cent of its investment cost per annum. The Bureau of Internal Revenue, in one of its bulletins, recognized 40 years' service life for ordinary office buildings constructed of bricks. In view of the present age, condition, and other factors, I have mentioned, I believe a 2 per cent rate, based upon an average year's service, average service life is fair and reasonable for the brick buildings in this classificaton (T. 1728).

For the frame building inventory under outside real estate, I have recommended a service life of 25 years. The respondent company used 16⅔ years in its previous accounting. Mr. Henrici recognized 20 years for many frame structures. He includes a great deal of frame construction with the horse and mule barns, for which he gives a 40-year life. The Bureau of Internal Revenue has recommended 25 years for frame barns, sheds, grain elevators, and factories. For certain frame dwelling houses they recommend 30 to 35 years (T. 1729).

The service lives permitted by the Bureau of Internal Revenue are in part a factor upon which the income tax [fol. 1463] paid by the corporation is directly determined. The Bureau of Internal Revenue, of course, check any set-up of depreciation made by a company under investigation, and in so far as they find radical departures from these recommended service lives, they, of course, insist on adjustments, so that the recommended service lives of the Bureau of Internal Revenue are guides that are used to determine whether or not a particular company is following what might be termed a consistent and reasonable practice. As an average, the service lives recommended in the bulletins to which I have referred are those generally permitted in determining income tax (T. 1730).

For the frame construction included in stockyards buildings and improvements, which includes the stock pens, chutes, and so forth, with many smaller structures, I recommend a 20-year service life. The respondent company used 16⅔ years, and Mr. Henrici in Government Exhibit No. 114 has recommended 15 and 20 years. The property in this account varies in age, and much of it is in what may be termed a second or third cycle of replacement. Repairs generally have cost about 1 5/10 per cent of the investment annually. On the whole, therefore, I feel that the

average life of 20 years for the stockyards frame construction, and 25 years for the outside real estate frame construction, is ample. In the matter of water lines, I have used a service life of 80 years (T. 1731). Originally, the respondent company used 25 years, and Mr. Henrici, whenever he has shown this property separately, has used 50 years. I have made a number of studies on the life of cast-iron pipe, and find that wherever construction has been well performed in the first instance, and operation has been continuous over a number of years, the life of cast-iron [fol. 1464] pipe is extremely long. The Bureau of Internal Revenue recommends 75 years for 8-inch and larger pipe, and 50 years for smaller pipe. For sewers, I have used 66⅔ years for service life. The company used 25 years, and Mr. Henrici uses 50 years where he has reported the item separately. Many city sewers now in good condition are much older than 50 years. For the type of sewer used by this company, I believe a service life of 66⅔ years is very conservative. With respect to paving, I have used 25 years for brick, 33⅓ years for concrete, 25 years for asphalted concrete, and 12½ for asphalt. The company used 20 years for brick asphalted concrete with services lives for other forms of pavement the same as I recommended. Mr. Henrici, where he mentions pavement separately, uses 35 years. This type of pavement, where used in cities, has generally lasted for as long a time as I have adopted as a fair service life. After inspecting this property, I am of the opinion that these service lives are ample. The changes I have recommended are the result of my inspection (T. 1732) of the property and the records relating to repairs, replacements, and retirement, previously presented in my exhibits. The service lives used by the company were probably based upon the best information obtainable at the time they were fixed. Now, however, in view of the past experience of the company and present conditions, influencing service lives, in my opinion they should be changed in the manner I have recommended. Several years from now, after review of pertinent data available at that time, it might well be that further modification of service lives, either longer or shorter, might be necessary. The service lives which I have discussed are those which I believe to be the minimum that should be used in determining annual depreciation reserve accruals upon the straight-line basis (T. 1733).

[fol. 1465]

RESPONDENT'S EXHIBIT No. 127

Statement Showing an Analysis of Investment and Annual Depreciation Accruals

Outside Real Estate

(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)	(11)	(12)
Balance as of Jan. 1	Buildings Frame	Buildings Brick	Buildings Concrete	Paving Brick	Paving Concrete	Sewers and Plumbing	Water and Steam Lines	Electrical and Machinery	Concrete Troughs	Live Stock Scales	Total
1922..	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....
1923..	$169,787.25	$570,110.83	$7,580.37	$3,214.50	$11,235.02	$27,647.40	$51,903.81	$32,636.05	$343.90	.....	$874,459.13
1924..	168,352.25	570,301.63	7,580.37	3,214.50	11,235.02	28,085.10	51,903.81	32,636.05	343.90	.....	873,652.63
1925..	168,853.38	574,891.81	7,580.37	3,214.50	11,235.02	28,076.81	52,443.00	32,636.05	343.90	.....	879,274.84
1926..	168,853.38	573,443.11	7,580.37	3,214.50	11,235.02	28,076.81	59,825.60	32,636.05	343.90	.....	885,208.74
1927..	168,853.38	573,718.11	7,580.37	3,214.50	11,235.02	28,076.81	59,825.60	32,636.05	343.90	.....	885,483.74
1928..	135,789.68	573,814.11	7,580.37	3,214.50	11,235.02	28,076.81	59,825.60	32,636.05	343.90	.....	852,516.04
1929..	135,789.68	573,814.11	7,580.37	3,214.50	11,235.02	28,076.81	56,587.60	32,636.05	343.90	.....	849,278.04
1930..	104,129.62	572,182.63	7,580.37	3,214.50	11,235.02	28,248.36	56,587.60	32,636.05	343.90	.....	816,158.05
1931..	115,950.54	588,396.21	7,580.37	3,559.50	11,235.02	28,883.36	56,587.60	38,308.13	433.90	$1,019.24	851,953.87
1932..	116,011.44	588,396.21	7,580.37	3,245.99	11,548.53	28,883.36	56,587.60	38,283.13	433.90	1,019.24	851,989.77
	Annual Depreciation Rate										
	4%	2%	2%	4%	3%	1.5%	1.25%	6%	5%	8%	
	Accrual										
1923..	6,791.49	11,402.22	151.61	128.58	337.05	414.71	648.80	1,958.16	17.20	.00	21,849.82
1924..	6,734.09	11,406.03	151.61	128.58	337.05	421.28	648.80	1,958.16	17.20	.00	21,802.80
1925..	6,754.14	11,497.84	151.61	128.58	337.05	421.15	655.54	1,958.16	17.20	.00	21,921.27
1926..	6,754.14	11,468.86	151.61	128.58	337.05	421.15	747.82	1,958.16	17.20	.00	21,984.57
1927..	6,754.14	11,474.36	151.61	128.58	337.05	421.15	747.82	1,958.16	17.20	.00	21,990.07
1928..	5,431.59	11,476.28	151.61	128.58	337.05	421.15	747.82	1,958.16	17.20	.00	20,669.44
1929..	5,431.59	11,476.28	151.61	128.58	337.05	421.15	707.35	1,958.16	17.20	.00	20,628.97
1930..	4,165.18	11,443.65	151.61	128.58	337.05	423.73	707.35	1,958.16	17.20	.00	19,332.51
1931..	4,638.02	11,767.92	151.61	142.38	337.05	433.25	707.35	2,298.49	21.70	81.54	20,579.31
1932..	4,640.46	11,767.92	151.61	129.84	346.46	433.25	707.35	2,296.99	21.70	81.54	20,577.12

[fol. 1466]

Sheet 2

Statement Showing an Analysis of Investment and Annual Depreciation Accruals

Equipment Investment

(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)	(11)
Balance as of Jan. 1	Auto-mobiles	Exchange	Office Furniture and Fixtures	Fire	Horses, Wagons and Harness	Harness	Yard	Hotel	Horse	Total
1922										
1923	$524.19	$23,661.63	$8,789.51	$4,191.76	$8,557.50	$2,874.31	$8,740.69	$16,281.95	$1,832.75	$75,454.29
1924	1,963.61	24,001.19	9,105.74	4,229.98	8,222.50	2,928.42	9,165.42	16,281.95	1,832.75	77,731.56
1925	2,490.75	24,038.25	9,209.53	4,843.99	7,922.50	3,093.81	10,124.67	15,360.73	1,832.75	78,916.98
1926	2,965.95	26,094.65	9,249.70	4,856.99	8,528.75	3,126.05	10,701.77	15,800.14	1,832.75	83,156.75
1927	3,190.06	26,094.65	9,461.59	4,856.99	8,043.75	3,117.55	10,853.11	18,787.99	1,832.75	86,238.44
1928	3,374.71	26,214.41	9,629.78	4,879.49	16,759.61	3,080.05	11,014.61	18,787.99	895.75	94,363.40
1929	3,316.90	26,209.41	9,939.95	4,879.49	17,447.11	916.60	11,095.89	20,130.99	885.75	94,822.09
1930	3,092.55	26,906.57	10,037.96	4,869.49	17,186.37	916.60	11,391.42	21,288.83	885.75	96,575.54
1931	3,105.04	26,916.57	10,077.16	4,966.73	17,248.87	916.60	11,415.02	22,165.98	421.00	97,232.97
1932	4,936.74	26,916.57	10,043.76	6,932.05	17,173.87	635.75	11,426.62	22,175.78	421.00	100,662.14
					Annual Depreciation Rate					
	33⅓%	2½%	10%	6%	15%	15%	12½%	10%	12½%	
					Accrual					
1923	174.73	591.54	878.95	251.51	1,283.63	431.15	1,092.59	1,628.20	229.09	6,561.39
1924	654.54	600.03	910.57	253.80	1,253.38	439.26	1,145.68	1,628.20	229.09	7,094.55
1925	830.25	600.96	920.95	290.64	1,188.38	464.07	1,265.58	1,536.07	229.09	7,325.99
1926	988.65	652.37	924.97	291.42	1,279.31	468.91	1,337.72	1,580.01	229.09	7,752.45
1927	1,063.35	652.37	946.16	291.42	1,206.56	467.63	1,356.64	1,878.80	229.09	8,092.02
1928	1,124.90	655.36	962.98	292.77	2,513.94	462.01	1,376.83	1,878.80	111.97	9,379.56
1929	1,105.63	655.24	994.00	292.77	2,617.07	137.49	1,386.99	2,013.10	110.72	9,313.01
1930	1,030.85	672.66	1,003.80	292.17	2,577.96	137.49	1,423.93	2,128.88	110.72	9,378.46
1931	1,035.01	672.91	1,007.72	298.00	2,587.33	137.49	1,426.88	2,216.60	52.63	9,434.57
1932	1,645.58	672.91	1,004.38	415.92	2,576.08	95.36	1,428.33	2,217.58	52.63	10,108.77

[fol. 1467]

Sheet 3

Statement Showing an Analysis of Investment and Annual Depreciation Accruals

Stock Yards Buildings and Improvements

(1) Balance as of Jan. 1	(2) Buildings Frame	(3) Buildings Brick	(4) Buildings Concrete	(5) Plumbing and Sewers	(6) Water Lines	(7) Steam Lines	(8) Wooden Tanks	(9) Concrete Tanks
1922								
1923	$598,499.32	$113,345.75	$28,100.83	$191,376.76	$84,548.24	$50.00	$13,025.91	$26,613.01
1924	598,610.59	113,345.75	28,100.83	191,376.76	84,548.24	50.00	13,025.91	26,613.01
1925	599,175.06	113,345.75	28,100.83	191,376.76	84,629.94	50.00	13,025.91	26,613.01
1926	599,175.06	113,345.75	28,100.83	191,376.76	84,629.94	50.00	13,025.91	26,613.01
1927	605,460.12	114,845.75	28,100.83	191,586.76	84,999.94	50.00	13,025.91	26,613.01
1928	605,094.88	114,845.75	28,100.83	191,586.76	84,999.94	50.00	13,025.91	26,613.01
1929	621,362.00	115,995.75	28,449.58	194,744.99	85,437.07	634.24	11,725.91	26,613.01
1930	620,645.35	116,012.75	28,449.58	194,881.21	85,437.07	634.24	11,725.91	26,613.01
1931	621,874.97	117,199.60	28,449.58	195,158.86	85,567.83	634.24	11,725.91	26,613.01
1932	622,659.79	117,199.60	28,449.58	195,158.86	85,567.83	634.24	11,725.91	26,613.01
Annual Depreciation Rate	5%	2%	2%	1.5%	1.25%	2%	5%	3%
Accrual								
1923	29,924.97	2,266.92	562.02	2,870.65	1,056.85	1.00	651.30	798.39
1924	29,930.53	2,266.92	562.02	2,870.65	1,056.85	1.00	651.30	798.39
1925	29,958.75	2,266.92	562.02	2,870.65	1,057.87	1.00	651.30	798.39
1926	29,958.75	2,266.92	562.02	2,870.65	1,057.87	1.00	651.30	798.39
1927	30,273.01	2,296.92	562.02	2,873.80	1,062.50	1.00	651.30	798.39
1928	30,254.74	2,296.92	562.02	2,873.80	1,062.50	1.00	651.30	798.39
1929	31,068.10	2,319.92	568.99	2,921.17	1,067.96	12.68	586.30	798.39
1930	31,032.27	2,320.26	568.99	2,923.22	1,067.96	12.68	586.30	798.39
1931	31,093.75	2,343.99	568.99	2,927.38	1,069.60	12.68	586.30	798.39
1932	31,132.99	2,343.99	568.99	2,927.38	1,069.60	12.68	586.30	798.39

Sheet 4

Statement Showing an Analysis of Investment and Annual Depreciation Accruals

Stock Yards Buildings and Improvements—Continued

(1) Balance as of Jan. 1	(2) Machinery and Electrical	(3) Concrete Troughs	(4) Live Stock Scales	(5) Paving Brick	(6) Paving Concrete	(7) Paving Asphalt Concrete	(8) Paving Asphaltic	(9) Total
1922	.....	.....	.....	.....	.....	.....	.....	.....
1923	$16,858.67	$27,453.88	$21,589.46	$455,337.90	$163,099.10	$5,770.34	$5,888.20	$1,745,787.43
1924	17,758.67	27,453.88	21,614.46	455,337.90	163,099.10	5,770.34	5,888.20	1,752,594.04
1925	17,713.67	27,453.88	21,614.46	455,337.90	163,099.10	5,770.34	5,888.20	1,753,195.21
1926	18,020.90	27,453.88	21,891.69	455,337.90	163,099.10	5,770.34	5,888.20	1,753,779.67
1927	18,020.90	27,453.88	21,891.69	456,392.90	166,469.17	5,770.34	5,888.20	1,766,569.80
1928	18,020.90	27,453.88	21,992.24	456,392.90	166,469.17	5,770.34	5,888.20	1,766,305.11
1929	18,070.90	28,453.88	22,762.24	456,392.90	172,354.71	5,770.34	5,888.20	1,794,656.12
1930	18,478.93	28,453.88	22,869.21	445,547.29	184,449.75	5,770.34	5,888.20	1,795,856.72
1931	21,732.03	28,453.88	22,869.21	445,547.29	186,001.38	5,770.34	5,888.20	1,803,486.33
1932	21,732.03	28,453.88	22,869.21	445,547.29	186,282.55	5,770.34	5,888.20	1,804,552.32
Annual Depreciation Rate	6%	5%	8%	4%	3%	4%	8%	
Accrual								
1923	1,011.52	1,372.69	1,727.16	18,213.52	4,892.97	.....	471.06	65,821.02
1924	1,065.52	1,372.69	1,729.16	18,213.52	4,892.97	230.81	471.06	66,1[illegible].39
1925	1,062.82	1,372.69	1,729.16	18,213.52	4,892.97	230.81	471.06	66,139.93
1926	1,081.25	1,372.69	1,751.34	18,213.52	4,892.97	230.81	471.06	66,180.54
1927	1,081.25	1,372.69	1,751.34	18,255.72	4,994.08	230.81	471.06	66,675.89
1928	1,081.25	1,372.69	1,759.38	18,255.72	4,994.08	230.81	471.06	66,665.66
1929	1,084.25	1,422.69	1,820.98	18,255.72	5,170.64	230.81	471.06	67,799.66
1930	1,108.74	1,422.69	1,829.54	17,821.89	5,533.49	230.81	471.06	67,728.29
1931	1,303.92	1,422.69	1,829.54	17,821.89	5,580.04	230.81	471.06	68,061.03
1932	1,303.92	1,422.69	1,829.54	17,821.89	5,588.48	230.81	471.06	68,112.48

[fol. 1469] In Respondent's Exhibit No. 127, which consists of 4 sheets, I have classified the property in accordance with the company's investments. I have grouped the property in accordance with my determination of the various items which will carry the average service life. I have shown as of January 1, by each of the years, the balance of the company's investment account for such items as frame buildings, brick buildings, paving sewers, and so forth. For each similar group of items I have found fixed depreciation rates based upon probable service lives, taking into account the company's record of retirement, renewals, replacements, repairs, and my inspection of the property at the present time. These depreciation rates, to my mind, represent the sums necessary to meet all normal replacements to adequately provide for obsolescence and inadequacy, and at all times keep the company's investment unimpaired. I realize that these rates of depreciation differ from those actually used by the company, so that in so far as they concern the period prior to 1932, they are given here for the purpose of computation only and represent no recommendation for a restatement of the company's accounts. The original rates used were but approximations and were the best estimates that could be made at the time they were adopted. All good accounting practice recognizes that depreciation rates are subject to correction from time to time as data is developed. The last 10 lines at the bottom of each sheet of this exhibit represent the annual depreciation accruals for each group of items of property, and the last column shows the total accrual for the year. These figures may be compared with the actual accruals made by (T. 1734) the company as shown on Respondent's Exhibit No. 116, and it will be noted, especially with respect to stockyard buildings and [fol. 1470] improvements, that I am showing by my method less depreciation than was actually taken by the company. This is due to the fact that whereas the company averages a 4.83 per cent annual accrual in 1931, my estimate is 3.77 per cent. In tracing it back further, it will be found that for frame and brick buildings, sewers and paving, which are the largest items in the account, I am using approximately 1 per cent less than the original company set up. This is due to the fact that I believe the service

life of the property, which has now reached what may be termed the turn-over stage, in part at least, is somewhat longer than that originally adopted.

Based upon the inspections I have made, my experience, and other data to which I have referred, I believe $100,000 is the proper annual amount to be set up for depreciation reserve upon the straight-line basis upon respondent's property as of the year 1932, it being the total of the various accruals shown on Respondent's Exhibit No. 127. That is my recommendation under existing conditions, and I think the sum is a fair, reasonable amount to charge annually to the depreciation accounts (T. 1735). Anything less than that would be, in my opinion, involving a great risk as to future requirements. It may not be next year or the next five, but at some time the accrual would fall short of the requirements necessary to meet retirements and replacements as made.

Group Accounting

There is another practice which I believe should receive consideration, but it departs somewhat from that previously adopted by the respondent company, and that is the practice of group accounting. Under this method any property retired which has been a component part of the group upon which depreciation accruals have been made, may be accounted for at the time of retirement for [fol. 1471] this entire investment cost by charging it to that portion of the total reserve which covers the group to which it belongs. This, of course, is providing that the particular group has accrued a reserve sufficiently high to accommodate the retirement of that particular unit. This practice is not followed by the St. Joseph Stock Yards Company, as is clearly illustrated by Respondent's Exhibit No. 122. However, it will be noted that only the portion of the investment cost of retired items of property have been accrued at the date of retirement. The practice of the St. Joseph Stock Yards Company has been to extinguish in its depreciation reserve only that portion of the investment in the particular property retired which has been accrued up to the date of retirement (T. 1736). Any balance or difference has been a charge to the surplus account. Theoretically, at least, the depreciation reserve and

surplus are both liabilities, so that a deduction might be made from either, and it has appeared to me that it is to the interest of both the public and the company to clear all retirement out of the depreciation reserve. From any standpoint, the depreciation reserve should be used wherever possible under good accounting practice, and since this practice has been generally approved by the Interstate Commerce Commission and various State commissions, I would recommend that it be done in this case. The practice I have just described as group accounting for depreciation has been approved by the Interstate Commerce Commission in its order in Docket 15100, reported in 177 I. C. C. 351, 445 (T. 1737).

The data for Respondent's Exhibit No. 128 has been taken from Respondent's Exhibit No. 127 and from the company's records relating to salvage and insurance. In those cases where the retirements have been partly offset by salvage or insurance, I have made proper adjust-
[fol. 1472] ments. The exhibit is largely self-explanatory and shows the gradual increase in the balance for depreciation from 1923 to 1931. The debit items relate to retirements and are adjusted for salvage and insurance by the credit item and the balance at the end of the year, which is carried forward as the first credit at the beginning of the next year. The annual depreciation accrual credit is taken from Respondent's Exhibit No. 127.

In order that a fair service life may be ascertained, the assumption is always made that adequate repairs, replacements, and renewals will take place as needed. A property is frequently in 100 per cent operating condition when individual units of that property are at a point which require immediate renewal. As soon as such replacement has been made, the property is still capable of rendering 100 per cent operating efficiency, but its physical condition has been materially increased by the restorative repairs which have taken place. As previously explained in my testimony, the labor in connection with these repairs is at a much higher cost than the labor incurred for the same property at the time of its original installation. It is (T. 1738), therefore, entirely improper to account for replacements made under a repair program on the basis of retired and replaced accounting, but it would only be a question of time under this method before the original investment would be

greatly exceeded, due to the fact that the labor for the additions would greatly exceed the labor for the investment. In a property such as the St. Joseph Stock Yards, however, the cost of materials entering into a construction will remain comparatively constant except during times of extreme inflation or deflation of prices. The cost of materials entering into repairs, including a number of miscellaneous costs, were included in Respondent's Exhibit No. 118. And the per cent which the cost of material bears [fol. 1473] to the total cost, in accordance with the inventory, was shown in Respondent's Exhibit No. 117. Using these two factors, it is possible to state with reasonable accuracy the total cost of replacement and repair materials on the investment cost basis, instead of actual maintenance cost basis now recorded.

In Respondent's Exhibit No. 129 (T. 1739), I have taken the principal accounting subdivisions and have indicated the cost of materials used in restorative repairs and have added an estimate of the cost of investment labor to these materials. The purpose of this exhibit is to give a guide to the sum which, in my opinion, it might be necessary to add to the annual net depreciation accrual. As an operating expense, this represents an average cost to maintain the property up to a uniform degree of operating efficiency. In other words, this average charge is an operating expense which must be provided for repairs, in addition to the normal depreciation accrual. In so far as the total cost of repairs, including all labor, exceeds this sum, there would be no change in the normal accounting. However, if any year the total cost of repairs was equal or less than this average material accrual, there should be an additional sum added to the depreciation reserve in that year, so that for the future, operating expenses may be maintained normally. Any sums added to the depreciation reserve under this method are, of course, subject to accounting withdrawals in years when the material repairs exceed the average. We, thus, get a total fair depreciation accrual for each year by adding the sums shown on Respondent's Exhibit Nos. 128 and 129.

Comments on Testimony of Government Accountant

I have read the testimony of John J. Bachmann and examined Government Exhibit No. 124 (T. 1740). I cannot

[fol. 1474] agree with many of the statements respecting the theory of depreciation and the general conclusions reached by the witness relating to the amount of depreciation to be allowed the St. Joseph Stock Yards Company. The first point to which I wish to call attention is the apparent overlapping of depreciation with what may be termed "repairs and replacements." There need be no confusion on this matter, and if we have in mind a clear conception of depreciation, we know it must relate only to the physical property in place. The replacement, then, is a substitution of new material for the old material which was new at the date of investment. In illustration of this point, I may quote from pages 41 and 42 of Professor Earl A. Salier's work on depreciation, which expresses my views on the matter: "The distinction between depreciation and maintenance should be drawn still more emphatically. Maintenance secures daily efficiency but does not, in any scientific manner, prevent the impairment of total investment. This is the function of depreciation allowances which must be based upon a comprehensive plan. Maintenance is necessarily haphazard in so far as continuity is concerned; moreover, its cost is not uniform and ordinarily increases with advancing age of the asset (Hayes, H. V., Public Utility, 1, p. 163). The best maintenance does not prevent the existence of a condition of normal deterioration, nor does it make (T. 1741) any provision for the resulting financial effect on invested capital. In San Joaquin and Kings County Canal Company v. Stanislaus County, 191 Federal 875, September 18, 1911, the court separated current repairs from depreciation and required a separate provision for the latter.

"The report of the Massachusetts Highway Commission on the appraisal of the New England Telephone and Telegraph Company (March 27, 1909, in 17th Annual Report, [fol. 1475] Massachusetts Highway Commission, 1909, pages 211, 215) maintained that total cost of reconstruction can be met adequately only by averaging costs from year to year, since current repairs are inadequate to offset loss, resulting from wear and tear, obsolescence, legal regulations, and casualties. Taking into consideration 'first cost, rate of depreciation, probable effect of rate of changes in the art, and the acts of municipal bodies, special misfortunes caused by the elements,' and also considering any

salvage that might result, the appraisers concluded that 7.3 per cent of the value of the property, exclusive of land, general supplies, and working capital, should be charged yearly against income. In the Pioneer Telegraph Company v. Westenhaver (118 Pacific 354, January 10, 1911) the Supreme Court of Oklahoma stating that current maintenance 'represents only the cost of those units that had become so badly depreciated that they had to be replaced during that year,' found that 7 per cent of reproductive value of physical property would be a proper annual depreciation allowance.''

It was to emphasize this very point that I prepared Respondent's Exhibit Nos. 117, 118, and 119 to show the discrepancy between the restoration of material in new condition and the original investment cost of that same material (T. 1742). It will also be noted from Respondent's Exhibit No. 129 that whereas material in the inventory represented 69 per cent of the total cost, the material used in repairs averaged much less than 60 per cent of the total cost of repairs. For this reason it is improper to use the entire cost of repairs in the sense that they are replacements of material in kind.

As explained elsewhere in my testimony, it is perfectly proper to set up annual accruals for replacements of material ordinarily classified as repairs, but such an allowance [fol. 1476] is an addition to the normal depreciation accrual which provides for the ultimate retirement of the property, either at the expiration of the assumed service life or before that period, due to obsolescence or accident, or following that period, due to an extension of service life, brought about by adequate renewal. At this time, also, it might be well to mention the distinction between the depreciation accrual for a composite property consisting of many units with differing service lives and a single item of property, such as a machine or an individual building. Service lives, in the first instanee, are assumed on the basis of an average of a number of different things, and there will be a retirement of a portion of the units making up the composite whole before the expiration of the average service life assumed. Another portion of the property may be retired at exactly the average service life, but a part of it will actually exceed the average service life. This (T.

1743) controls the composite condition per cent, and it also warrants the changing of average service lives, due to the experience gained from retirements and the knowledge of the new materials used in replacements. It is also apparent that so long as retirements take place, in a composite property, the reserve will never reach 100 per cent, if computed on correct service lives (T. 1744).

What I show in Respondent's Exhibit No. 130 was taken from Government Exhibit No. 114, it being that portion where Mr. Henrici set up the depreciation and composite service life for the different sections of the property. This same data is shown on pages 12 and 13 of Government Exhibit No. 124. The left-hand vertical scale on this diagram represents the per cent of remaining service life of the 1932 reproduction cost found by Mr. Henrici, after retirements and additions have been made as indicated by the service lives, and on the right-hand vertical scale it [fol. 1477] shows the per cent which the accumulated depreciation reserve on the straight-line basis would bear to the total cost. In other words, I have assumed in making this exhibit that I would start with the property in 100 per cent condition, and having the service lives indicated, would retire and restore the property at the expiration of the assumed service lives. The fluctuations in the diagram then indicate the effect of these retirements and replacements which occurred at the (T. 1745) stated service life. It will be noted from the data that the shortest service life for any of the property is 15 years, and the next is 50 years, the composite being 24.8 years. If this was a single unit of property having a total service life of 24.8 years, the line on the diagram would extend from 100 per cent in the first year to zero per cent at 24.8 years, and would then jump to 100 per cent in the next year. Since the property consists of a large number of units, however, having various service lives, the line showing the per cent of the investment remaining will never reach zero. This, Respondent's Exhibit No. 130 illustrate graphically. It will be noted that there is a minimum point reached at the expiration of the 40th year. At that date of retirement there is but 15 per cent of the life of the property remaining which was in existence in the first year. The reserve had accumulated to 85 per cent of the investment, neglecting, of course, salvage or insurance. This diagram further illus-

trates what would take place if each of the individual units was retired in its entirety at the completion of its service life. Of course, this very seldom represents the history in the case of a composite property. For instance, sewers or water lines would be retired and replaced piecemeal, and in a growing property there would be a great deal of up-
[fol. 1478] turn in the diagram due to the installation of the property at 100 per cent condition (T. 1746).

I noted Mr. Bachmann's statement on page 593 of the transcript that it is unnecessary to determine exactly what constitutes repairs and what constitutes replacements. I think he is wrong in this decision, due to the labor item on repairs and replacements of which I have spoken. It is true that all expenses, including depreciation, come under the general heading of maintenance, but in so far as the reserve is concerned, it should only be drawn upon for actual retirements and replacements at the normal cost of installation. The investment accounting for retirements must be upon the basis of the original investment, or any subsequent adjustment due to reappraisal. It is not clear to me just what the witness means, when he divided depreciation into two parts, as described on pages 595 and 596 of the record, since he enumerates the principal causes of depreciation and includes that form in his first division. The only cause omitted that I can recall is that due to accidents, such as fire, tornado, or flood. The second part of the question of depreciation mentioned by the witness only refers to an implication that the management of the company has accrued a reserve for some other purpose than to protect the investment and keep it intact and unimpaired. The witness's description on page 596 of the record of how depreciation can be determined apparently confuses the depreciation ascertained for valuation purposes with that which must be taken care of there as an accounting proposition (T. 1747). An engineer can determine the condition of property by inspection but the accountant may properly include in his record depreciation accruals which bear no direct relation to the exact physical condition as observed on a particular date. The accountant may deter-
[fol. 1479] mine expired service life from his records of past experience with respect to retirements of individual units, but this bears no direct relation to the existing condition of the composite of those units of property at a particular

date when such condition is predicated upon an inspection. The expiration of the service life of the units is an accounting matter only. A large part of the discussion on page 597 of the record is superfluous for the reason that the witness again confused the condition for valuation purposes with the accounting necessary to determine the depreciation reserve. The inspections made by the various engineers and the determination of condition at each date could give no consideration to the retirements of property due to such factors as obsolescence and inadequacy any time subsequent to the date of inspection. Neither could such an inspection relate directly the property's future service life from an accounting standpoint and the existing physical condition at date of inspection from an engineering standpoint. It is absolutely improper to say that, because in these determinations of condition the average depreciation was only $2,000 to $3,000 per year from an accounting standpoint. No consideration was given to fluctuating price levels or to additions and betterments in the property (T. 1748).

Respondent's Exhibit No. 130 shows very clearly the condition per cent raised or lowered, depending upon the installation of new property, and it may be that the observed condition at the time of inspection was influenced entirely by the installation of some replacement which brought a portion of the property up to 100 per cent condition. However, it might well be that on any succeeding dates there would be this increase in condition, so it would give no measure at all of expired service life condition to note the physical condition on two different dates and then [fol. 1480] relate the difference. It is perfectly possible that the repairs would greatly influence the condition at the particular date of inspection. However, depreciation, from an accounting standpoint, has been continually going forward. From an accounting standpoint, provision must be made for the unexpired service life, and the straight line basis provides a method which is less apt to result in inequitable results (T. 1749).

Referring to paragraph 106 of the Secretary's decision upon the first hearing in this proceeding and to the portion thereof in which the Secretary points out the small difference between condition per cent of the property in different years under different appraisals, as indicating that much

of the property can be given an indefinite life by current repairs and that the annual accruals for depreciation, which might otherwise be proper, may be reduced, I have this comment to make. In my opinion, the condition per cent determined for valuation as of particular date, only relates to the valuation as of another date and can have no bearing on service lives for accounting purposes, since the determination of condition per cent by inspection is dependent upon so many different factors. This is clearly illustrated by referring to Government Exhibit No. 114, where Mr. Henrici shows condition per cent determined by 5 different inspectors employed by him. The exhibit shows a variation as high as 25 per cent in a single case and 20 per cent in a number of other cases, between the determinations of these different inspectors. The impropriety of using this method may perhaps best be illustrated by referring to Respondent's Exhibit No. 130. It will be seen that, for the first 15 years, the difference in condition per cent would normally represent the measure of the depreciation, but, after that period, due to the replacement [fols. 1481 & 1482] of (T. 1750) property retired, there is a constant fluctuation in condition per cent, and the great difference as indicated in the 40th and 80th years, due to replacements, would indicate the fallacy of determining service lives by any comparison of condition per cent. It will be noted that there is a variation of over 60 per cent at the time these major replacements took place. Another factor which is illustrated by this exhibit is the possibility of obtaining the same condition per cent in different years. According to this diagram, this property might be in the same condition per cent in the 10th, 16th, 21st, 41st, 52d, 61st, 63d, 81st, 86th, 91st, and 94th years. It may be noted that under appraisals made in different years, there might be appreciation in condition per cent due to the introduction of new property through replacement. This situation would not obviate, but on the contrary, would emphasize the necessity of placing the proper amount in the reserve each year.

On the service life theory, if I followed strictly the service lives determined by Mr. Henrici and they turned out to be accurate, as shown on Respondent's Exhibit No. 130, I would find the condition per cent the same in the 10th year and in the 94th year (T. 1751). According to the

theory followed by the Secretary, if the property was inspected in the 10th and 94th year and the condition found to be the same theoretically, there would be no depreciation over that entire period. It would be necessary, of course, to have a depreciation reserve to take care of that term. If we merely took the test stated by the Secretary in paragraph 106 of his former decision, we would theoretically have no depreciation at all in a period of 84 years. That situation would keep on recurring ad infinitum, if the property existed (T. 1752).

[fol. 1483] I have examined the testimony of Mr. Bachmann in connection with his discussion of retirements on pages 598 and 599 of the record and in connection therewith desire to refer to Respondent's Exhibit Nos. 116, 122 and 123. These exhibits show that from 1922 to 1931 the retirement total was $182,666, or 6.6 per cent of the investment in the property. It will be noted also that of the property in existence in 1922, only 93.22 of the same property was still in existence in 1931. We know, from the inventory, that a great deal of this property has not yet reached its ultimate service life, and I am referring to such property as the Exchange Building, pavement, sewers and water lines. Whenever any of this property is retired, we may expect these retirements to increase from the average rate of 7/10 per cent during the past 10 years to possibly as high as 5 or 6 per cent. Theoretically, we may then expect a falling-off until about twice the average service life of the entire property is reached. That has been the history of all statistics where it has been possible to keep an accurate record of retirements of a composite property. It is the form assumed by mortality tables, used by life insurance companies, and is the indicated law followed by numerous tests made by railroads and Governmental agencies during the retirement of such property as locomotives, freight cars, cross ties and similar items. For this reason, the figures of $7,000 to $10,000 referred to by the witness on page 599 of the record have no significance as to the (T. 1753) probable retirements in the future. Certainly his statement, "The provision for depreciation should be kept in line with the actual depreciation that is being suffered * * *," bears no relation to the adequate accounting depreciation accrual which should provide for an equaliza-

tion of future retirements. The actual average expiration of service life is not provided for by this retirement [fol. 1484] method. To relate annual depreciation allowance to actual retirements would, upon the basis of the Government engineer's life tables, require a detailed study of at least twice the greatest estimated service life, that is, it would have to extend over a period at least that long in order to represent anything reliable. On the basis of Mr. Henrici's study it would be around 100 years to produce the service life. It is not clear whether it is the witness' purpose to eliminate from the total retirements those which were due to fire. Accident has always been recognized as one of the causes of depreciation and should be provided for in any accounting accrual. It can never be foreseen but statistics show that accidents of some nature generally occur at irregular intervals throughout the life of a large composite property. These can best be provided for through the straight line method of depreciation, since it is possible that the greatest accidents in the history of the company may occur during the early life of (T. 1754) the units of property. Coming now to the statement on page 602 of the record, where the witness points out the discrepancy between the service life determined by Mr. Henrici and the actual experience of the company, it is apparent that the witness again has lost track of the necessity of equalizing retirement in later years. As shown by Respondent's Exhibit No. 122, the actual depreciation accruing on property retired represented cumulatively from 1922 to 1931 only 57 per cent of the actual asset value of these retirements. This factor itself indicates that the service life basis, now adopted by the company, has not yet reached the stage where it fully compensates the investor for the retirement of his property. The rate payers of today are not paying their proportion of the cost of property consumed in service. The witness states on page 603: "The [fol. 1485] straight line method of making provision for the actual depreciation is out of the question. It is far in excess of what the company needs to maintain its plant when we consider the retirements and the replacements and repair policy of the company." In my opinion, the witness has confused the method with the results produced by the application of service life rates. It seems

to me that the straight line method should be adopted in any circumstances for the composite property, but in the case of the St. Joseph Stock Yards, as I have shown by another exhibit, the service lives used in the past should be somewhat extended so that slightly lower rates of depreciation can be applied. This is the only way that future retirements can be fully protected (T. 1755). If under the straight line method we find that too great an amount was being accrued it would be simply a question of extending the service lives to conform with experience. I brought that out, I think, once before, that the experience that is gained from the operation of a property over a period of years warrants adjustments to service lives, but, in my opinion, does not warrant a change of method. I cannot imagine any circumstances in respect to this or any similar property where the straight line method would be out of the question. I don't think it is a question of method at all. Again on the same page Mr. Bachmann refers to the specific experience of the company, but, as pointed out previously, this experience is only the beginning of a much longer turnover period. It will be some time before the replacements can be said to be uniform, and, even then, there will be quite large fluctuations in the different years. That again is clearly illustrated by Respondent's Exhibit No. 130. The violence of the fluctuations, due to retirements at the expiration of various service lives, produces these fluctuations in condition. On pages 603 and 604, [fol. 1486] the witness discusses the depreciation accruals (T. 1756) on the stockyard pens, fences, runways, and so forth. As shown by Respondent's Exhibit No. 123, the actual retirements for this class of property over the past 10 years have been only 3 per cent of the investment. Also, as shown by Respondent's Exhibit No. 119, the material used in repairs for this class of property has averaged only one-half of one per cent of the material in the inventory. In other words, the one-half of one per cent renewal material has kept the property up to 100 per cent operating efficiency. However, there has been going on an actual expiration of total service life (T. 1757). The company, in its accounting for depreciation, assumed six per cent per annum was proper for nearly all the frame structures such as pens, and so forth. At the same time, they assumed five

per cent for the brick paving and varying per cents for the remaining property. In Government Exhibit No. 114, Mr. Henrici assumed 6.7 per cent for a large portion of this property. In Respondent's Exhibit No. 127, however, I have recognized the fact that a great deal of the property should have an extended service life. I have used five per cent on the buildings, and four per cent on paving. Evidently the factors I have just mentioned were not considered by witness Bachmann. Considering next the Exchange Building discussed on page 604 of the record, the witness has apparently confused the total service life assumed with the age of the property. It is true that this building was constructed in 1898, but it is also true that in so far as this company's depreciation is concerned, the accrual began in 1915 and until 1922 represented less than two per cent per annum on the value of the building. Since 1922, the depreciation has been accrued at the rate of three per cent per annum. On Respondent's Exhibit No. 127, I have recognized the ex- [fol. 1487] tended life of this structure and I am using two per cent per annum. I wish to point out, however, that even if the company's basis is continued for another period of years, it will be sometime in the 1950's before the full investment cost of the building is accrued in the reserve, and no one can be sure that this building will be in existence that long (T. 1758). In the meantime, there is the liability of obsolescence due to fire, tornado, flood or other accident, which is not provided against. As shown by Respondent's Exhibit No. 118, the materials and miscellaneous expenses, exclusive of labor, applicable to this building have averaged less than two thousand dollars per year, which is much less than one per cent of its investment cost. I cannot agree that there has been any error in the straight line method of depreciation adopted for this building, although it is probable that from now on the rate of annual accrual should be reduced. Although the physical condition per cent of the building has not materially changed, there has been a gradual loss in service life which must be provided for. The same is true, of course, with respect to sewer mains, water mains, which ultimately must be replaced, since no item of property of a similar nature has ever been known to have unlimited life. If respondent

found it necessary to change its wooden hog pens to concrete pens that change, of course, is one of those due to obsolescence, which must be provided for in any reserve that is set up and assuming that change was made in any period near the present time, the straight line method would more nearly approach the reserve needed than any other method. There is one other factor in connection with the Exchange Building. It is my understanding that there was a recommendation by witness Christensen in this case for elimination from the (T. 1759) rate base of two-thirds of that building. That would be a forced retire- [fol. 1488] ment of that amount from the company's rate base which should be provided for in some form through the depreciation reserve. I am assuming that the company cannot afford to retain and maintain property on which the Secretary refuses to permit a fair return. On this same page, 604 of the record, Mr. Bachmann again is confusing the condition per cent obtained for valuation purposes with the accounting accrual for depreciation, which should go ahead on a uniform basis throughout the entire service life of any property. It should not be expected that the two would ever exactly agree, for the reason that maintenance expenses relate entirely to the operating efficiency and must be kept up uniformly throughout the entire service life. They may possibly increase as the property approaches the end of its service life. On page 605 of the record, the witness makes a statement: "The straight line method, in my opinion, being out of the question for this particular purpose, there appears to be left only the sinking fund method or the method of actual retirements, plus the actual (T. 1760) accrual of depreciation as determined by observation." In my opinion, the latter method suggested is so unscientific as to merit no consideration from an accounting standpoint. The actual future retirements may be estimated with some degree of accuracy by considering mortality statistics, and it can be shown that as the property grows older, retirements will increase. Consequently, the greater the restoration of these retirements, the higher the observable condition will be immediately following such replacement. It might well be, therefore, that the "actual accrual of depreciation as determined by observation" will be a negative quantity, or appreciation, depending upon the date of observation.

It is perfectly possible that as between any two observations, the condition of certain of the property will in- [fol. 1489] crease, due to these replacements. This method, therefore, makes no provision for equalizing retirements or for anticipating the expiration of service life. It has been my observation that the straight line method is the method generally adopted by the larger industries and corporations of the country. I am very familiar with railroad accounting, of course, and in that exclusively straight line depreciation is used (T. 1761).

Large railroad systems have items of property which duplicate every item of property that you would find at the stockyards. They have office buildings, sewers, water mains and I can think of no item of property in the stockyards that is not included in the inventory of some railroad in the country, generally in a great many. I was going on to say about the corporation's use of straight line depreciation. I know that all of the larger companies such as U. S. Steel and the motor companies and large manufacturing companies all use the straight line method. I made a special inquiry of the Bureau of Internal Revenue just recently and was unable to find a record of any company which was using the sinking fund method. The general method used was the straight line method. The straight line method is not only permitted by the Bureau of Internal Revenue for the purpose of collecting income taxes from corporations but it is practically required (T. 1762). I do not know of anything so peculiar about the St. Joseph Stock Yards as to make inapplicable to it a method that is imposed by public authority or voluntarily adopted for practically every other property in the country. Continuing my comment on the retirement method, I feel it should be discarded as strictly unscientific and not in accord with good accounting practice. Mr. Bachmann takes up the discussion of a factor which, in my opinion, introduced the worst fallacy into his argument regarding depreciation and that [fol. 1490] is the use of the sinking fund method. The first statement made on page 605: "It does come closer to the facts that any method except the actual retirement method," is grossly in error because under neither the sinking fund nor any other method can we anticipate the future retirements exactly, and as was shown on Re-

spondent's Exhibit No. 125, the sinking fund method for a single item of property is always below the total required accrual at the time of retirement by a greater amount than the straight line method. Either method will produce the entire cost at the expiration of the service life, but during this intermediate period the straight line method is always more nearly accurate in case of a retirement before the end of the service life (T. 1763). The essential factor of the sinking fund method which it is necessary to assume is that all the contributions to the fund could be reinvested semi-annually and earn the estimated percentage without any loss during any period of time. In order to call it the sinking fund we have to assume that it will earn that money. It would be more correct to say that the sinking fund method is estimated to produce the same amount at the end of the service life. It is apparent, therefore, that for any single piece of property retired before the expiration of the service life, the sinking fund method would produce inadequate results. It is also equally true that for a composite property containing a large number of units, such as the St. Joseph Stock Yards, the necessary reserve for replacing the investment will never be reached so long as new property is being installed prior to the expiration of its estimated service life. Under the straight line method, as shown by Respondent's Exhibit No. 125, we come nearer meeting the requirements for retirements. The sinking fund method also assumes, as stated by the witness in this case, that the [fol. 1491] money will be invested semi-annually and secure a compound interest return. It is difficult to understand (T. 1764) how any assumption can be made as to the rate of return or the continuity of the investment which will be in any way accurate. And there will be a further reduction due to personal property and income taxes. It involves some further assumption to consider that twice each year the interest from this fund will be immediately reinvested the same day at the same rate of interest as the entire fund. In a composite property such as the St. Joseph Stock Yards, the constant withdrawals from the fund to meet retirements and replacements would involve such a complicated adjustment as to compound interest, that the whole thing would soon become fantastic and unworkable (T. 1765). If by way of illustration

we needed $656 to take care of a retirement and our funds were invested in $1000 bonds that would necessitate one of these complicated adjustments, because you would immediately cash your $1000 bond, and while you would receive the accrued interest on that bond at the time you cashed it, it would mean that you had a balance left over, being the difference between the cost of your replacement and the $1000, which would have to be invested in something that would bring in the necessary interest. It would have to be invested the same day as there could be no lapse at all.

Complexities of the Sinking Fund Method

Some of the complexities of this compound interest sinking fund basis have been pointed out in the report of a special committee of the entire subject of valuation of public utilities. This is found at page 1474 of Volume 81 of the Transactions of the American Society of Civil Engineers, [fol. 1492] December, 1917. I wish to quote from this report, which expresses my opinion on this subject in such a clear manner that I am prepared to adopt this statement as my own. Under the heading (T. 1766) "The Entries under the Sinking Fund Method," the committee reports as follows: "Operating Income, in the amount of the annuity, is charged to operating expense, in order to keep the operating income account correct. As fair return is based on the book value, there must be no deduction in this below original value, except as units are retired, so there will be no credit to depreciation reserve, which will reduce the book value, but, to some other liability account as trust fund reserve. Among the assets, cash or other assets will be credited and the sinking fund charged with the amount of the depreciation annuity. The fund will be credited only as cash is expended for replacement of or in lieu of units covered by the fund. The fund must be carried as an undistributable assets belonging to and going with the property to offset the trust fund reserve. Accounting must go on within the fund. Its cash must be invested and its income accounted for separately from the operating income. If its cash is reinvested in the property itself, purchasing new units and increasing the income-producing but depreciating property, the earnings from such new units should be charged to the fund.

These units being depreciating units must also earn depreciation annuities which must, in turn, be invested, and in effect a new sinking fund must be set up for each addition to depreciating property. It would be manifestly impossible to separate the earnings of the several units of a complex property, but the operating income can be separated into two parts, respectively, proportion to the investment from the fund, and that from other capital and its due share charged to the fund" (T. 1767). One point which is emphasized in the above is that there must [fol. 1493] be no depreciation in the rate base under the sinking fund method. This conclusion agrees with the finding of the Interstate Commerce Commission in Docket 15,100 as reported in 118 I. C. C. at page 355.

I have read the prior report of the Secretary in this case and know he used a depreciated rate base for rate making purposes. I also know that a depreciated rate base has again been offered in evidence by Mr. Henrici and by Mr. Kosters. There has been no suggestion in this case of anything but a depreciated rate base, as far as I know. As I shall point out later, that is an impossible situation, where you use the sinking fund method. "The sinking fund method, on the other hand, is based upon the theory that the company is entitled to a fair return upon all property maintained in condition for proper service, regardless of the fact that a part of its service life has been consumed and that the owner should receive no reimbursement for property consumption, until the unit has finally been retired. Funds reserved from earnings by the depreciation charges are, therefore, segregated and allowed to accumulate (T. 1768) at interest, pending such ultimate reimbursement. They cannot be used indiscriminately for corporate purposes, but must be used to produce definite and reasonably assured earnings. The difference in theory is well illustrated by the following passage from the brief filed in behalf of the Public Service Commission of Oregon, that Commission being one of the advocates of the sinking fund method 'manifestly the straight line method of calculating depreciation cannot properly be used in conjunction with an undepreciated rate base, nor should the sinking fund principle be followed where a depreciated rate base is considered. In other words, the public cannot equitably be required to pay for capital as it

is consumed, that is, on the straight line basis, and, at the same time, be required to pay a return upon such consumed [fol. 1494] capital, that is, on an undepreciated rate base, nor should a utility company be asked or required to forego its legitimate return upon the full undepreciated value of its property unless its capital is fully repaid as rapidly as it is consumed.' Granting the premises upon which they are based, both theories are logically sound. In our opinion, the premises which underlie the straight line method are, as we have indicated in an earlier part of this report, in accord with the principles which have been enunciated by the Supreme Court of the United States."

I agree fully with the testimony of Mr. James A. Councilor appearing on page 373 of the printed abstract reading as follows: "That is practically the doctrine (T. 1769) of the Interstate Commerce Commission in the case to which I have referred. The case of reproduction new and sinking fund must get together or depreciated rate base and straight line. You could not mix the two, one inherently involves the other. In my opinion, the use of the depreciated rate base plus the sinking fund method, proposed by the Government, in fact deprives the owner of a part of his property value during the entire life, assuming that the factors I have before me are correct." That statement is substantially the conclusion that I have stated in the last portion of my testimony. Continuing my quotation: "This method is also much simpler and easier to apply, nor are the practical results of the two methods very different, a fact which we have also noted and explained in the earlier discussion." In my opinion, when provisions for depreciation or retirements are made on the sinking fund basis, and the accumulated funds are invested in the property, it is necessary that this part of the total investment earn a return, as well as the property acquired in a different manner. If deductions are made for depreciation, the earnings of the retirement fund necessary for its ultimate ade- [fol. 1495] quacy would be lacking (T. 1770). Under such methods of accumulating sinking fund reserves, therefore, no deduction for depreciation should be made.

Assuming that the Secretary of the Court fixes the fair return at 6, 7, or 8 per cent and there is no place for respondent to use this money in its own business except in replacements of property, as such replacements are re-

quired, there would be no method by which the company would be earning the 5 per cent semi-annually to go to the accretion of the sinking fund. The annual allowance which would have to be credited to the sinking fund each six months in addition to the fair return of 6, 7, or 8 per cent would be an additional expense to the company. There is nothing that I find in any of the exhibits or testimony of Mr. Bachmann that would indicate he has included such an allowance in his figures. If the money were used by way of extension of respondent's facilities it would be subject to all the fluctuations and misfortunes of the business (T. 1771). I do not think even there we would be assured of our 5 per cent semi-annually over a period of years. It would be entirely up to the company to earn on that property the same as it would on other property, and, due to the difficulty of taking a composite property and assigning the amount of earning to any particular item, it would make it almost impractical, as an accounting matter, to determine that the specific addition that you had made from this sinking fund was, in fact, earning even the fair return that the property as a whole was making. If for one year that property not only failed to earn a fair return but did not earn 5 per cent you would immediately have to enter another expense item that would be an additional expense to your company; otherwise, your whole structure of the sinking fund would fall down, if you did not accrue each [fol. 1496] year this amount that represented the compound interest. The thing has to go on continuously in order to reach the result at the proper time. In view of what I have just stated, I do not think the company (T. 1772) could properly invest the money merely in its own business. I shall show later that it would be practically impossible to invest it in its own business.

Continuing my comments, it is therefore clear that the adoption of the sinking fund method of accruing depreciation immediately necessitates the use of it in an undepreciated rate base in valuation, and, as I understand it, no proposal has been made in this case to use any undepreciated cost of reproduction as the ultimate rate base. In a rate case, the burden on the public on any basis of the calculation of return, is one of the principal factors. The owners of the property, however, are entitled to a fair return and are further entitled to see that their investment

is kept unimpaired throughout the years of operation. That portion of the earnings set aside for depreciation, under any method, can be reinvested in the property, as additions, or they can be invested in outside securities. In either case, there will be a return on these invested reserves, provided the investment is made according to the hypothesis of the sinking fund method, and in the first case that the company earns the money every year and in the other case that the security does not fail to pay its interest or dividend rate (T. 1773). There is also the consideration of taxes which I shall take up later.

When the straight line method of depreciation accrual is adopted, then the base made to measure the return on the original investment constitutes that that investment shall be diminished by the amount of depreciation. When [fol. 1497] depreciation accruals are made on the sinking fund basis, they are held by the company as a trustee, either as invested cash, securities, or a possible investment in additions to the property. Under the sinking fund method, however, these reserves are compelled to earn a stated return which must be compounded annually or semi-annually in order to build the total investment which is the objective. If this sinking fund depreciation, plus interest, is considered as a deduction from the investment, and the return measured by this depreciated base, there will always be a deficiency since the investor cannot take the return on the reserve and have it in the fund also. It is, of necessity, a part of the accrual and will ultimately impair the investment, and we considered very carefully the comparison of straight line and sinking fund methods of depreciation, as set out in the examples on pages 16 and 17 of Government Exhibit No. 124, and discussed by the witness on page 605 and 606 of the record. There is a fallacy in the conclusion (T. 1774) that the rate of return, under the sinking fund method, is 7 per cent and, under the straight line method, is over 11 per cent. In the first place, the figures shown in column 8 on Government Exhibit No. 124, relating to interest on the straight line depreciation, have no place in the calculation of the return, since this interest is not a part of the rate payers' contribution to the owner of the company. The calculation itself is on a compound interest method basis, which is also wrong. The rate payers' con-

tribution remains at 7 per cent, and should equal the return on the net book value shown in column 9, plus the return earned on the reserve in column 2. Under the sinking fund method, the 7 per cent must be figured on the gross book value, and, as long as that is done, the total sinking fund provisions, shown in column 7, will exactly balance, with the gross book value. If the return has been calcu- [fol. 1498] lated on the net book value, shown in column 10, which corresponds in this same example to a depreciated rate base, an adequate result would have been attained. The interest on the sinking fund shown in column 6 is distinguished from the interest on the straight line reserve shown in column 8, by the fact that the interest in column 6, in effect, belongs to the public until a total accumulation for the retirement of the asset is completed. The interest on the straight line reserve shown in column 8 belongs to the investor since it represents a part of his outside earnings. This example, of course, deals with only a single piece of property, but with the property consisting of a large number of items, the calculation becomes much more complicated (T. 1775).

In that connection I have heard no suggestion that the patrons of respondent are taking upon themselves the responsibility of putting up $50,000 a year to insure the company a 5 per cent return compounded annually. The rate payer's responsibility ceases when he provides the $50,000. The Stock Yards Company is to be made not only a stockyards but an investment banker who must guarantee a specific return. I know of no investment banker who will guarantee a return to the investor for 24.8 years (T. 1776). When a service is rendered, or goods sold, it has been my experience that the rendition of the service or delivery of the goods and payment therefor closes the transaction and the money paid thereupon becomes the absolute property of the payee to use for whatever purpose he desires. He is not obliged to reinvest it, but may let it lie idle, or use it for non-revenue-producing properties, as he desires. If I am buying a railroad ticket, I pay the railroad company the full fare. I cannot pay less than that amount on the theory that I can force the railroad company to accept less than its fare, and invest this sum at an interest rate sufficient to return, in a specific time, the difference between [fol. 1499] the sum I have paid and the full fare. Simi-

larly, the Stock Yards Company buys hay and corn at certain seasons of the year, and pays its taxes and insurance at specific times. The patron of the yard, at the time he receives his service, pays the full amount necessary to cover those items, and, as I understand Government Exhibit No. 124, it is not proposed that any other disposition of these expenses should be made. Following the Government's theory of a compound interest (T. 1777) sinking fund method to care for depreciation, which is not adjusted as a proper item of expense, it would be equally consistent for the patron to pay less than the amount currently necessary for such items as feed, taxes and insurance on the theory that special funds should be set aside, invested and reinvested, in order to accrue the full amount of the expenses incurred by the Stock Yards Company. As I understand it, the Government considers the propriety of paying dividends and accumulating a surplus out of its rates and charges. It would be equally consistent to require separate funds for this purpose to be invested at compound interest, and, thus, reduce the sum which may be necessary to enable the respondent to pay fair interest dividends and accumulate a reasonable surplus.

Comments on Testimony of Government Accountant

On page 606 of the record, Mr. Bachmann make a recommendation as to the amount of depreciation, giving the minimum as $10,000 and the maximum as $50,000. In my opinion, both of these figures are grossly inadequate since even the maximum figure makes provision for retirement of only 2 per cent of the property in one year, and the assumed interest earned on a fund collected under the sinking fund basis is so much of a guess that gross injustice to the company might result after a number of years of [fol. 1500] accrual on such a minimum basis. The argument, on page 608 of the record, with respect to property maintained indefinitely by repairs, is merely speculation, for it is impossible for anyone, at this time, to decide whether such property will in fact give out (T. 1778) next year, five years from now, or ten years from now. The pens and fences referred to are undoubtedly short-lived property, and the renewals and replacements may be made uniformly. The expense of these renewals will be an operating expense carried on the regular repair accounts or be

equalized by carrying through the ordinary straight line depreciation reserve. I have suggested the latter in my testimony. However, there is the additional reserve which must be maintained to take care of ultimate retirements. It is difficult to see how the witness distinguishes between the repair of a long-lived structure, such as the Exchange Building, and the repair of a structure such as one of the stock pens. If it so happened that conditions were reversed and there was but one stock pen and a large number of Exchange Buildings, it is probable that the same argument would be applied to the long-lived structures as now apply to the short-lived structures, considering that the single pen depreciation may be accrued over its short life, just the same as depreciation is accrued for the longer-lived Exchange Building. At the time of retirement and replacement, the reserve will automatically disappear and a new reserve will be considered. Under the group system of accounting and the use of the straight line method, this accounting is materially simplified for such property as the cattle pens and so forth. A great deal of the statistics for structures show that the per cent of structures which exceed normal service lives is very small (T. 1779). There are certain buildings in the United States over 100 years old, but fully 99 per cent of the same type of buildings have [fol. 1501] been retired at periods varying from 20 to 50 years, so the probability of error in assuming definite service lives can be easily offset by adjustments during any period by depreciation accrual. Major replacements in buildings or other items of property merely extend the life period over which depreciation has accrued. Such replacements are always accompanied by proper repairs preferably from the investment account in the depreciation reserve concurrently. On page 610, the witness makes the statement that in effect the company would be fully reimbursed through the depreciation allowance for the cost of the Exchange Building as set up on its books. This, of course, is impossible as shown by sheet 15, of Respondent's Exhibit No. 124, and from Respondent's Exhibit No. 120. The total accrual up to 1932 for all outside real estate buildings was shown to be $399,530. Mr. Henrici's appraisal of the Exchange Building area, shown in Government Exhibit No. 114, was $373,396. The outside real estate account includes in it not only the Exchange Building but

numerous other structures, the total investment account of which is approximately $852,000. The investment on the Exchange Building itself, without its annex, garages, or equipment, is about $360,000. On a proportionate basis, therefore, the accrued depreciation applicable to the Exchange Building is only about one-half of its investment. I do not agree with the implication in the testimony on pages 610 and 611 (T. 1780). Mr. Bachmann states that his purpose in considering the depreciation now set up on the books of the company is that it furnished the best guide as to the allowance to be made in the future. This is not necessarily so as I have indicated many times in my previous testimony. On pages 611 and 612, the witness discusses the best practice of the company with respect to depreciation accruals on the Exchange Building. The present [fol. 1502] rate of accrual used by the company for the brick building included in the Exchange area is three per cent per annum. Certain equipment and auxiliary facilities take a somewhat higher rate. Prior to 1922 I am informed the same rates were in effect, and I think the investment base was somewhat lower. In Respondent's Exhibit No. 127, I recommend two per cent for the brick building in this area. On pages 613 and 614 of the record, the witness discusses what would take place provided the assets of the company were fully depreciated. That is supposition, of course. Now, it is easy to understand that in the composite property the various items of which have service lives running as high as 50 years, the depreciation reserve as a whole will never reach 100 per cent as long as replacements are made when needed, and the property is kept in continual operation. I have never known of a case under regulation where depreciation of the property as a whole was accrued beyond 100 per cent. In fact, that would be contrary to all accounting classifications with which I am familiar. It is impossible to determine the exact per cent of each asset depreciated in this property up to 1922. I think it is apparent that as a whole the depreciation reserve reached only a fraction of the total investment value of (T. 1781) the property. The re-appraisal in 1922 necessitated an adjustment in the depreciation reserve maintained for the purpose of replacements since during the period immediately following the War, prices greatly increased and replacement values increased accordingly. The cost of re-

placements in lumber alone was nearly 200 per cent of the replacement per cent of lumber in 1916. Concrete, brick, pipe and other items increased in cost enormously. The re-appraisal of the property was therefore fully justified and the consequent increase in the depreciation reserve [fol. 1503] was warranted in accordance with good accounting practice.

On pages 615 and 616 of the record, the witness discusses the investment of the depreciation reserve. The only reinvestment which this company could have made in its own property would have been a total for the property as a whole of $244,238 during the period 1922 to 1931. Even upon the $50,000 basis suggested by Mr. Bachmann the reserve would greatly exceed the possible actual investment in additions to the property. It is apparent, therefore, in this case that the investment of the depreciation reserve is a matter of outside investment instead of investment in the property of the company itself. It must be borne in mind also that under the sinking fund method whatever return is received that the fund invested in the property itself must be reinvested sometime only at least where it will assure of a similar return to that accrued on the principal. The discussion therefore, on page 616 in no way justifies the use of the sinking fund method on the supposition that the reserve will be reinvested in the property (T. 1782) of the St. Joseph Stock Yards itself.

Actual Return Received by Respondent from Investments

I have made an investigation of the property return which would be received if the sinking fund were actually reinvested by the company. As a measure of what might be expected if the company reinvested the sums which it set aside under the sinking fund method as a depreciation reserve; I have studied the actual experience of the company in its own investment of surplus funds during the years 1927 to 1932, and the result of this investigation has been set out in the form of an exhibit which is Respondent's [fol. 1504] Exhibit No. 131 (T. 1783). In this exhibit, which consists of 3 sheets, I show in the figure column the nature of the company's investment. Columns 1, 4, 7, 10, 13, 16 and 19 show the amount of the investment in each of the years 1927 to 1932; columns 2, 5, 8, 11, 14, 17 and 20 show the return; and columns 3, 6, 9, 12, 15, 18 and 21 show the

annual rate of return in per cent. Attention should be directed to the footnote which indicates that for investments of less than one year the items have been adjusted to an annual rate for comparative purposes. It should be noted that during this 6-year period, 1927 to 1932, the maximum return was 5.03 per cent in 1929 and the minimum was 2.79 per cent in 1931, with an average for the period 4.04 per cent. It should be borne in mind that this is gross return from which must be deducted income and personal property taxes. Assuming the fund is invested in securities which are not tax-exempt, my understanding is that the return would be reduced to approximately 1.65 per cent. High grade railroad bonds will not net over that net percentage. I have made a very comprehensive study on railroad finance which indicates that since 1878 the average yield of railroad bonds of the better grade has been about 4 per cent gross, and they only exceeded 5 per cent during 1920, throughout that entire period (T. 1784). At the present time railroad bonds are considered very doubtful as to the continuance of return. Money is being borrowed from the Federal Government to pay the fixed charges of railroads. In this composite property, a great deal of the retirement must take place prior to the date when the average service life of the property as a whole is reached. Now, any investment from the sinking fund depreciation reserve which has been made in such deficient life property, has to be offset by an investment which will bring in more than the average return, since interest is to be compounded on the basis of the aver- [fol. 1505] age service life. In conclusion, therefore, attention should be directed to testimony explaining Respondent's Exhibit Nos. 127 and 128, where a definite recommendation is made for depreciation on the straight line basis with extended service life, the group system of accounting, and the further use of the depreciation reserve to cover maintenance and renewals. If this is done, I am satisfied that both the public and the corporation will be amply protected, the first, as to the efficiency of operation and service, and the second as to the return on the investment and the ultimate protection of this investment against impairment.

The 4.04 per cent return which respondent has received on its various investments in the past five years is taxable under a county tax of 2.03 per cent, a franchise tax of .05

per cent which would be 2.08 per cent deductible from 4.04 per cent, leaving 1.96 per cent as the net income which would be taxable under both State and Federal income taxes, the State tax being 2 per cent and the Federal 13¾ per cent, or a total of 15¾ per cent. Deducting that tax which amounts to approximately .31 per cent would leave a net of approximately 1.65 per cent (T. 1786).

The testimony of Mr. James A. Councilor in the last paragraph on page 369 of the printed abstract agrees with my investigation and knowledge of that subject. I have made an investigation and as stated a while ago, I am quite familiar with the accounting, especially on railroads, and there is no sinking fund method used there, and I have also made many inquiries respecting other industries, particularly from the Income Tax Bureau, the Bureau of Internal Revenue, and with several corporations whose accounting I have examined (T. 1787).

[fol. 1506] Cross-examination:

Qualifications

By the term "analyst" as I used it in stating my qualifications I intended to convey the idea of an examination and analysis of statistical subjects pertaining to matters such as rates, valuations, costs and other features. It is a statistical term that usually involves statistics, getting them together and putting them up in proper form. I would call that the work of an analyst. The particular books of the respondent that I went to at the time of my examination of records included a great many journals and ledgers, and there were in addition to that a great many other working papers. I began working on this case I think it was the 17th of November (T. 1790). I had been retained some time prior to that. But I actually began my studies here in St. Joseph about that time. I was in St. Joseph the 17th, 18th, and 19th of November. I came here again just recently but no time was spent in St. Joseph between November and the present hearing. I arrived here the morning of the 29th of January, 1933, and I began my testimony on February 1, 1933. The examination of respondent's books took place during the three days I was here in November but during those three days I outlined enough work for the employees

of the Stock Yards Company so that I was continually receiving information from them during the intervening time between November and January of this year, and I was working on this case a large part of the time in my Washington office, using the data (T. 1791) that I had collected in November and the subsequent data which was furnished me by the employees of the Stock Yards Company. I was working in the stockyards office during the three days I was here. Not all of the time was spent working on the books, [fol. 1507] but I worked on data that I had collected and which was furnished me while I was in the stockyards offices. I worked not only during the daytime but also in the evenings at the hotel. I have not handled any of respondent's books since I came here on January 29. I have handled statements which were furnished me (T. 1792). On my first trip to St. Joseph during November I made an inspection of the physical property of the respondent. I made another inspection of all this property at the time I was inspecting the St. Joseph Belt Railroad in 1930. I went over all the property at that time, including both the railroad and the stockyards property. That was due to a suggestion on my part as well as a suggestion on the part of some of the employees of the Stock Yards Company that it might be a good thing to have a knowledge of the stockyard situation. I was here one day at that time (T. 1793). That was for the railroad and stockyards inspection, both. That inspection was not made in connection with the determination of depreciation reserve for the railroad. That was made because I wanted to see this property and inform myself as to its general condition, noting the nature of the maintenance and the character of the property. I have not made any inspection of respondent's structures since I came here on January 29.

The purpose of my inspection of the books of respondent was to enable me to prepare Respondent's Exhibit Nos. 116 to 131. I had in mind, at least a portion of those exhibits at the time I went over the company's books, and I knew that I would not personally abstract all that data, so I outlined many forms in which I wanted that data taken off, and that was done for me at various times from November until as recently as about February 1st (T. 1794).

My first experience with public utility regulation was [fol. 1508] with the Interstate Commerce Commission. I

did some work which pertained to valuation of railroads before I went with the Interstate Commerce Commission as an employee of the railroad. At the time I left the employ of the Commission and went into private practice in so far as my own work has been concerned, my experience in public utility regulation has been exclusively with railroad regulation. I had participated in one or two matters which might be termed outside jobs that were not railroad jobs, one of a telephone company which I recall. Up to the time I began my private practice after leaving the Interstate Commerce Commission, as to my experience with public stockyards I received part of my compensation from the Omaha stockyards about 1908. I was employed by the Union Pacific Railroad. A viaduct was being constructed which was to be paid for one-half by the Omaha Stockyards and the other half by the Union Pacific. I received half of my compensation from the Stockyards Company while I had charge of the construction of this viaduct (T. 1795). I had charge of the construction of this viaduct at the Omaha Stockyards which consisted of building a street viaduct over a portion of the stockyards. That had nothing to do with the operation of the stockyards, only as it pertained to the traffic. We had a great many traffic questions there to solve, and the stockyards traffic was greatly involved while this construction was going on. That did not cause me to make any study or determination regarding the handling of livestock in the stockyard. The construction of this particular structure was one of the pieces of property that was being replaced. Now, as far as that went, that was a stockyards piece of property that required engineering and study and consideration. It was used partially in connection with live-[fol. 1509] stock. Livestock was driven over there (T. 1796). It was driven into the yards as it would be over any city street. There was the action of the hoofs of the animals on the pavement of the structure. That was a question that required some study as to what was the best type of pavement to use. I am familiar with what are commonly called livestock viaducts, such as the viaduct at the St. Joseph Stock Yards which runs across Illinois and Packers Avenues. This viaduct which I constructed at Omaha was not a viaduct in that sense. It was more of

taking the place of an approach to the stockyards. It was a viaduct which is used for vehicular and other traffic similar to that which passes over a city street (T. 1797). Inasmuch as the viaduct was in the vicinity of the stockyard, probably a great deal more livestock passes over it than would pass over on a street some distance removed from the stockyard. I have had the cases of the stockyard railroads located at St. Paul, Sioux City, and Fort Worth, and in the course of my preparation for those cases I familiarized myself with those stockyards (T. 1798). By that I mean that I went over their property with the idea that sometime I might be employed by the stockyards and might say that I made an examination of the property at the same time of my visit when I was inspecting the railroads. I have not had other experience with the operation of the larger stockyards. Of course, the ordinary stockyards maintenance by railroads at stations along the line, when I was doing maintenance work for the Union Pacific I inspected several of those.

I have not been in the business of shipping livestock. I ran a ranch three or four years and turned the stock over to someone else to ship. I know a little about livestock.

Referring to my testimony on page 1688 (T. 1799), what [fol. 1510] I meant to convey there was that while I was in the San Francisco office of the Interstate Commerce Commission, which was the office in charge of what is known as the Pacific District, one of the five districts, I had charge of the cost accounting work in the Pacific District. Then, when I came to Washington in 1921, when the five districts were consolidated, I was given charge of cost accounting work for the five districts in Washington.

It would be impossible to say that anyone had recommended the position taken by the Interstate Commerce Commission on depreciation in Docket 15,100. The final decision in that case was written by one of the Commissioners himself, and he took the entire record as the basis for his decision. Now, respecting certain parts of that record, what I had done may have influenced the conclusion that the Commissioner reached, but it would be impossible to say "yes" to your question. There are a great many things in that docket that I did not believe in at the time it was issued and since that time a great many things that I have op-

posed, but, as a basic study of the subject of depreciation and the matters of history and the effect of methods, I think it is one of the best things that has ever been written. There (T. 1800) are one or two points which I believe are contrary to the decisions of the Supreme Court, that undoubtedly will be overruled at some time, but there are many other points that have been upheld by the courts and probably will be. I do not agree with the Commission's position that depreciation should be based on original cost. I think that the courts have very clearly stated that the present value is the basis to be used (T. 1801).

[fol. 1511] Computation of Annual Depreciation Allowance for Respondent

I think that a depreciation set up under regulation is to be distinguished from depreciation set up in the operation of a business. Under regulation, the question always resolves itself into the fair return, and, in the operation of a business, the depreciation reserve might be said to be entirely at the whim of the management. Any reserve could be set up, if they wanted to present particular facts. If I were running an unregulated factory I could, of course, instruct my accountants to set up a reserve in any amount that I thought necessary for them to set up. In that case there is no higher body than the management of the company to determine what shall be done. If the reserve which was set up proved to be entirely too high and it appeared that too much was being set up, it could be carried into surplus and paid out to stockholders (T. 1802). In setting up a reserve allowance for rate making purposes, the allowance comes from the public and goes to the investor. If the rate regulatory body errs and requires the public to contribute too greatly to the reserve, there is no practical way of returning that money to the public. It would not necessarily have to be returned to the public because there would always be the question of the interpretation of what is meant by "too great a reserve." I am assuming that no greater reserve would be accrued than the investment in the property, and then it is a question of the rate of accrual.

I stated that I thought $100,000 a year should be charged to operating expenses as an allowance for depreciation re-

serve for the respondent company. If the Secretary of Agriculture allowed a charge to operating expenses for that purpose of $125,000, and some years hence experience [fol. 1512] demonstrated that $100,000 was the correct amount, and that the patrons of this yard had been required to contribute $25,000 a year more than they should, I know of no practical way of returning that to the patrons (T. 1803). In the course of time I assume that the reserve would be used for the purpose of retirement. I am assuming all the time that the total investment on the present value, if that is used, would not be exceeded by the reserve under any method of accrual. I mean that when the respondent had accumulated a reserve of $125,000 a year on the basis spoken of, when that had accumulated equivalent to the value of the depreciable property, that the respondent would cease to set up any further depreciation reserve. I know of no instance where the depreciation reserve has ever exceeded the investment, and as I pointed out in connection with my testimony on Respondent's Exhibit No. 130, in a composite property, it is practically impossible for that to occur, providing the retirements take place at somewhere near the assumed service life on which the accrual was made (T. 1804). At any time the reserve equalled what might be termed 100 per cent of the value of investment, I would say that the respondent should stop accruing any further depreciation. As I pointed out, that, as a practical matter, is almost impossible of attainment even with the $125,000 a year. There is going to come a time within the service lives assumed by Mr. Henrici when that reserve will be materiallly reduced.

My recommendation of $100,000 a year is not based on Mr. Henrici's estimate of twenty-four and a fraction years as the composite life of the property. It is based on the rates of depreciation that I have set up in Respondent's Exhibit No. 127 and the service lives assumed for those rates of depreciation would, I believe, give a composite life of 28.6 years (T. 1805). My recommendation of $100,000 a [fol. 1513] year is not based on the thought that in 28 years that will have accumulated into a fund equal to the cost of reproduction new of the depreciable property as found by Mr. Kosters. You cannot make that statement correctly because in a composite property where the service lives

vary as in my estimate from 20 to 80 years, there are constantly recurring retirements which would reduce your depreciation reserve or hold it to normal, and there would be no opportunity to reach 100 per cent as long as there were any retirements at all. Now, there would be retirements. We know that the property is getting to an age now when we may expect more retirements than we have in the past, and therefore this reserve, under any assumption as to age, can never reach the 100 per cent, as I see it. The taking out of this reserve of moneys from time to time to make replacements of property retired will keep the reserve from ever reaching an amount equal to the cost of reproduction new of the property as found by Mr. Kosters. You should consider all the time that this is a composite property with varying service lives of component parts. The making of replacements would not necessarily extend the composite life of the property. We may learn as we go on that an assumed service life, we will say, of 25 years, is not the correct service life, and we may correct it to 20 years or to 30 years, or some place in between. It is practically impossible to assume exact service lives (T. 1806). The replacements in many instances may be of superior property. I know in the case of railroads, the introduction of superior ties has greatly increased the life of the tie structure as a whole. The making of replacements when they should be made does not necessarily have a tendency to lengthen the service life of the unit of property. If, in the first instance, your assumption of service life is correct, the replacement simply means that when the new property is installed, it again is [fol. 1514] going through the same cycle of life as the original property which it replaced. As to whether a unit of property of an assumed service life will continue to be in condition to render service for the number of years assumed, without having any replacements made in parts of that unit of property during that period, I assume that you are overlapping what might be termed repairs. There will be restorative repairs in order to attain the service life assumed. The property must have certain repairs unless it is a property similar to a stone wall or something of that nature where the repair would be what might be termed a major repair, if it was made at all. I estimated

the life of the Exchange Building to be 50 years (T. 1807). In that estimate is assumed that ordinary repairs will be made when and as needed, and if those repairs are not made, I would expect a shorter life than 50 years. The same thing is true of those larger restorations of parts commonly called replacements. If we replaced a wall on that building, I would call that a matter which should be taken account of in the replacement, but I think the ordinary painting repairs or here and there the installation of a piece of new flooring or something of that kind has nothing at all to do with the service life. The depreciation reserve is intended to cover only the expiration of the service life of the property and not the normal running repairs. If there was a complete replacement of the roof, I would ordinarily carry that as a depreciation charge (T. 1808). I do not think that a complete replacement of the roof would have the tendency to carry the service life of that building beyond the original 50 years. If you carried it through the depreciation reserve, you would retire from the reserve the cost of that roof, and would then start a new accrual on that portion of the building represented by the roof. That automatically would extend the service life slightly, and [fol. 1515] if you would put in a new wall, you get the same effect, but the service life assumed in round numbers at 50 years is intended to convey the idea that the building's entire useful life will be exhausted at the end of that period (T. 1809). If the building became useless, the roof would become useless with it, no matter how new the roof was.

In setting up a depreciation reserve for the Exchange Building, if we assume that the building cost $100,000 and has a life of 50 years, I would recommend that $2,000 per year be put to the depreciation reserve for that building. At the end of 50 years that would accumulate the $100,000, less whatever had been taken out to cover replacements, and if there had been retirements taken out, the reserve would not reach the $100,000 until sometime longer than the 50 years. Assuming that in spite of the take-outs for retirements the reserve for the building reached $100,000 at the end of 60 years and the building was still standing and serving its purpose, there would be no further additions to the reserve under what I would term correct accounting practice. I would not expect any further operat-

ing expense chargeable to the public beyond that time (T. 1810).

As to whether I would approve the practice that is sometimes engaged in of having a reappraisal of such a building and starting to set up a new depreciation reserve, that would depend entirely on the purpose of the reappraisal. If the reappraisal was intended to adjust values under this period of 60 years, I would say that was entirely correct to reappraise the building and find out whether the building was then an $80,000 structure, or a $100,000 structure, or a $120,000 structure, and if it turned out that it was a $120,000 structure, there would still be the additional $20,000 that would be usable to develop a further depreciation reserve, which would be entirely proper, because if the build-
[fol. 1516] ing was, in fact, replaced, it would cost that amount of money to replace it. If the appraisal showed the building to be only a $100,000 structure, there should be no further charges to operating expenses for depreciation reserve.

My understanding of the purpose of the reserve is that it is not to accumulate any excessive amount. If at the end of a 60-year period there was a proceeding such as we are now engaged in, I think in the event (T. 1811) the Secretary made a reappraisal of the property and found its value to be exactly $100,000, and considering that that was the only property that was included in that particular depreciation accrual, he would not require any further accumulation of a reserve. However, we get right into the thing that I pointed out continually in my testimony, that this is a composite property, and, as I have grouped the structures, the Exchange Building itself would be in a group with other structures which would have differing service lives than the Exchange Building itself, so it would be nearly impossible to reach the $100,000 total accrual on such a basis. The estimate of service life of any property is based on a view of all the conditions pertaining to that property, among which are the age of the (T. 1812) property itself, the amount of repairs that have been made in the past, the existing condition, the experience with buildings of a similar nature, or buildings that most nearly approach the type of the one being considered, each of those facts have been given consideration in order to adopt what we think would represent the fair service life. The age

of a building or the service life is the time from the original construction to the date of retirement, and the method that I have used in this case is to assign a rate of depreciation which, of necessity, is dependent upon a service life. Now, the service life of a structure such as the Exchange Build-
[fol. 1517] ing, we might say, is 50 years; therefore, I have adopted a two per cent rate, knowing that that rate has not been used in the past, but merely recommending that it be used in the future, so that a suitable depreciation reserve will be developed before the retirement of the building (T. 1813).

In making a study to determine the service life of a building, the particular building I am examining, of course, is usually such that the records are available as to the age of that particular building. The records as to expiration of service life are what might be termed "general records." Sometimes it is very hard to find anything that is exactly comparable to the particular structure you are examining, but it is more the type of structure and the nature of the use which governs the final opinion that is expressed. We do not have tables set up for buildings similar to the mortuary tables which are set up to estimate the lives of human beings. I have seen a great many publications, I have referred to them in my testimony, the pamphlet gotten out by the Bureau of Internal Revenue, that sets up a service life for a large number of different structures and a great many text books that furnish similar information, but each particular case requires particular study. I think those are merely guides as to general life expectancy. In arriving at the life expectancy for the Exchange Building, I gave weight to the life experience of office buildings which had been built and used and then at some time or other come to the end of their service lives. I can say that I do give weight to that form of data. I think that is a part of any study. You have to consider everything available that even approaches the same nature of the case you have under investigation. That factor does not have controlling weight in my determination. It is simply one of the matters considered. As I stated in the beginning, there are a number [fol. 1518] of matters which have to be considered in determining service life, but it is doubtful, if, in any two cases,

you would assign the same weight to the same form a data that you considered.

As to how I reached the conclusion that the reasonable expectation is that the Exchange Building will serve for 50 years from the date of its original construction, I had knowledge of the age of this building. I also had the benefit of my own examination and such testimony as I read in the previous hearing. I had the benefit of a study of the various repairs that had been made to the building during the past 10 years. I had a general knowledge of brick buildings of a similar nature and, after giving consideration to all of these factors, it appeared to me that, that assumption that after the expiration of 16 years, providing the service life had not been extended by some major replacements, that the useful service life of this building would expire. If I were to return to St. Joseph even twenty years from now, I might be surprised and I might not be surprised to see that building still standing and rendering service, depending on what I found had taken place in the meantime. I do not think that I can add a great deal to what I have said with respect to what I took into consideration in determining the service life of the Exchange Building (T. 1816). It is a matter of engineering judgment after considering the facts, and it is not unusual for two engineers to differ as much as 10 years on the service life of a building half a century old. That would be true even though both engineers were pursuing engineering principles.

The end of the service life of that building, whenever it comes, may be occasioned by any one or a combination of any number of factors which I mentioned on my direct examination as bringing about deterioration. I think the [fol. 1519] causes that I mentioned are the principal causes, but there may be others, although they are probably less important. Wear and tear due to use and the action of the elements would be a factor, and also rust, rot, and decay, which are words ordinarily used for the action of the elements. If the owner decided to tear the building down and to erect a larger building on the same site, inadequacy might be one of the causes of replacements (T. 1817). The building, or many of its parts, might become what we term "old-fashioned" and the owner might think it profitable to have a more modern building and tear the building down for that reason.

There is that form of obsolescence, and there is also a form of obsolescence, I think, that is brought about by Government regulation, something of that nature which would make the building no longer useful to the Stock Yards Company. One instance is the southern cattle division, where the need for that particular division ended with the prohibition of the shipment of ticky cattle. Another form might be, as I understand from the testimony in this case, that there was a recommendation that about ⅔ of the Exchange Building was no longer used and useful. I think that might possibly make the building obsolete for the purpose intended (T. 1818). If the Secretary should follow the recommendation of Mr. Christensen and eliminate the Transit House hotel building from the rate base, in so far as this rate base is concerned that building will have come to the end of its service life. It is out of it and it is out under a Government regulation. If its expectancy of service life had been properly computed at the beginning, there should be in the depreciation reserve an amount wherewith to retire the entire building. That, of course, would be the theory of the accrual of depreciation reserve. We would know from experience, however, that in single pieces of [fol. 1520] property or in composite pieces of property there is expiration of service life at less than the average service life assumed. I have included the Transit House with other outside real estate. In so far as it is a brick building it goes in with brick structures. Some of those may expire at less than the 50-year service life assumed (T. 1819). If the Secretary does not find that building to be used and useful, my recommendation as to the proper accounting would be to retire it and charge its appraised value against the depreciation reserve. Of course, that would not be according to the past accounting of the company. The past accounting of the company would be such that all that could be charged against depreciation reserve would be the amount already accrued on that particular building. In making my estimates of the lives of the structures of respondent's depreciable property, I probably have not given weight to the possibility that in some rate determinations the Secretary or whoever has control of the matter may exclude property from the rate base and bring it to the end of its service life. I have stated that that is one of the causes of obsolescence, and I have given weight to

possible future obsolescence. That particular phase of obsolescence is one which may occur this year or next year, but may possibly never occur again in the future. With reference to the recommendation that ⅔ of the Exchange Building be excluded from the rate base as not being used and useful, I did not go into the record to determine the reasons on which the recommendation was based (T. 1820). I have been informed that the various offices in the Exchange Building other than those used by the respondent had been leased. I do not know whether the exclusion of a portion of the building from the rate base would occasion the vacation of those offices by their tenants. I know of [fol. 1521] nothing in connection with any structures, not only these structures, but other structures, which could prevent obsolescence in some form.

You can anticipate obsolescence in a building in accordance with the best prophesy as to the future, and still you might miss it (T. 1821). In my testimony where I used the terms "hidden" and "invisible" in reference to a depreciation which was going on in the present property but could not be seen, I referred partially to obsolescence. That has reference principally, though, to the actual expiration of service life due to any cause. The apparent condition of the property may remain the same from year to year, or as compared between any two periods, but there is this invisible expiration of service life that is going on all the time. That is, if we assume that a group of structures is going to last 50 years, there is, without any apparent change in conditions, an expiration of service life, and, if our assumption is correct, when the 50 year average is reached, the service life will have expired.

My idea of obsolescence is something that occurs rather suddenly at the time it occurs, and in anticipating obsolescence we cannot assume the exact year that it will occur. Therefore, when we consider obsolescence, we considered it merely as an average of what might occur suddenly at some particular time to a large number of structures in a group (T. 1822). I would hardly say that obsolescence is something that comes on a building in a few minutes. I think, for instance, if the building is no longer suitable for the purpose intended, you will know about it a few years before possibly, and you start to remove it, and then, due to economic conditions, you may decide to get along with it a few

years longer, but if you happen to be particularly prosperous and want to replace it, you would have reason for replacement due to obsolescence that had made itself apparent. [fol. 1522] As to whether I found any obsolescence apparent in the stockyards structures, I cannot recall any particular instance right now. There is always the possibility of substitution of superior materials, for instance, concrete fence posts might be substituted for wooden fence posts, and it might be decided that a certain type of gate that is used now is not quite as good as a superior type. Those are small factors, but I do not recall any large factor of obsolescence that is observable. As to whether concrete fence posts would serve better than the posts that are there, it would depend on the financial operations of the company, whether a recommendation could be made for a substitution (T. 1823) of that kind. We know that concrete would have a longer life than any wooden fence post, although we know that a certain type of cedar fence posts has an extremely long life. Now, it would require a calculation as to the probable new investment and the probable loss of old investment, and the remaining service life, when the material is going to be removed, and then the manager would have to decide whether they were prepared to appropriate necessary money for this new investment. The actual movement of livestock would not be changed in any particular, as I see it, although there would be the annual reduction in maintenance charge which would be due to the fact that there would be fewer posts replaced during the time that the concrete posts were used. On the other hand, there would be the loss in service life of posts that were there today. It is doubtful whether a stockyard having concrete fence posts would make any difference to the shipper (T. 1824). It is my thought that when the wooden fence posts come to the end of their lives, the company might decide to replace them with more lasting material. I do not know that there is any better type of gates than the stockyards [fol. 1523] has, but I was just saying that there may be a better type. Other than that, I do not think of any important obsolescence in the property as it stands now. A considerable portion of the property was constructed in its original location between 1897 and 1900. During the period from 1900 to 1933, there has come into use a great deal more steel and concrete construction. The use of wood and brick,

however, has not decreased materially (T. 1825). There may have been changes going on of various kinds. Office buildings of the type used by the Stock Yards Company, though, as far as I know, are not enough different to warrant any statement that there has been a radical change. If it was in a high-grade metropolitan area, it certainly would be true that office buildings or hotels which were constructed prior to 1900 and have not been modernized are considered pretty old-fashioned today, but in an area such as the stockyards, it is doubtful whether the same rate of change would be effective. It seems to me that it depends entirely on the type of business, and the location of the building of that kind, whether we could say that the more modern structures were better style than the older structures.

Even though this property has gone on since 1900 without showing any obsolescence, obsolescence is one of the factors that is always present. It seems to me that we know enough of the expiration of service life to say that obsolescence will be one of the causes of retirement of a portion of the structures in the stockyards. It may not be the cause of retirement. I do not say that obsolescence is the cause. I say it is one of the factors which may produce the retirement. And I say possibly, I would like to correct one of the impressions you have, as I understood your statement, just now, that I said there was no obsolescence in the property. Now, I do not think I wanted to make it quite that strong, [fol. 1524] that there was no obsolescence. I think what I intended there was that the obsolescence that might be expected for the future has not reached a stage yet that was particularly observable or would in any way influence an expectation of an immediate retirement. With reference to how I regard obsolescence, the decision that a particular structure has become obsolete is something that probably will occur comparatively quickly, but the obsolescence that is brought about by changes in the art is probably going on all the time but not observable. It is my thought that when you observe it you should give effect to it at that particular time, but prior to that time you must (T. 1827) consider that it is liable to occur. You have to take it into account in determining the rate of depreciation of service life, because it is a fact that obsolescence does occur. With respect to inadequacy, it is similar in a way to obsolescence, although, in a growing community or a growing business,

inadequacy develops just as fast as the business develops. In times of depression why, a great deal of the progress, the inadequacy is wiped out, but on continuing growth inadequacy develops just as fast as the growth goes on. Theoretically, a structure should be retired when it can no longer be operated economically. Meaning by that, of course, that it has reached a stage where it is inadequate to perform the service for which it is intended. So that inadequacy that is approaching should be recognized and provision made to make a replacement just as soon as it is thought economically sound to do so.

Valuation depreciation is entirely different from the discussion of depreciation for accounting purposes. There the existing condition is observed at the time of the valuation inspection. I would be more interested in determining the exact physical condition of the building rather than the [fol. 1525] service it was performing. For valuation purposes, you would determine the accrued or existing depreciation from an inspection of the building. I would make inquiry into the business that was being conducted to determine whether the building was rapidly approaching a time when it would be inadequate to house the business. I can illustrate that by an example with which I am very familiar, and that is the determination of condition per cent of a steel bridge. A steel bridge on a railroad is designed to carry a certain load and the actual condition of the bridge may be observed to be, we will say, 75 per cent, but upon inquiry it is found that that bridge is now carrying loads in excess of those provided for in its original specifications. That quite frequently happens. Now, I would give that consideration in fixing the condition of that bridge because I would be sure that that bridge, then, was not performing the proper service that it was intended to perform (T. 1830).

I stated that the determination of accrued or existing depreciation and the determination of the proper depreciation reserve were entirely different matters. The accounting depreciation for the reserve is a provision to take care of expired service life or to replace the property at the time of its retirement. The physical depreciation determined in valuation relates entirely to the existing condition of the property and the age or future service life does not control that condition, only as matters of interest, you might say, because the existing condition is a fact that you can observe,

and the condition may be brought about by recent repairs or replacements of a part of the property, so that the expired service life which I am assuming, upon the straight line basis, takes place uniformly, may be something entirely different than this existing condition on the day you find it. I think Respondent's Exhibit No. 130 illustrates that, that diagram where the existing condition brought about by re- [fol. 1526] tirements might be the same for a large number of years and still the percentage of expired service life would be an entirely different figure (T. 1831). The obsolescence that I think should be provided for in a depreciation reserve may or may not take place. For instance, we take a building that may retire because it burns down, it may retire because it is obsolete for the purpose intended, it may retire because it is inadequate, or it may finally wear out, but, due to one of those causes, we have to provide for this ultimate retirement. We don't know now which one of those is going to be the exact cause of the retirement, but we do know, from past experience, that those particular causes have been the ones which forced retirements of similar structures in the past. So, to my mind, it is not necessary to say that because there has been no big obsolescence in the property up to the present time, there will be none in the future. There may have been obsolescence in the past. I think that there was an indication in some of the records I have examined that a form of cinders used on runways was replaced by paving, and that certain types of pens were changed somewhat, and various matters of that kind that I would class as obsolescent and have taken place in the past (T. 1833).

I mentioned accidents as another factor of depreciation, and under accidents named fire, flood and tornado. There might also be riots of various kinds, and there might be other accidents which would happen, but I think wind, rain and fire are the three elements which cause most of the trouble in the nature of accidental destruction. Those are one of the bases of setting up a depreciation reserve. The exact weight assigned to any one of those would be absolutely indeterminate, but, as I said a moment ago, the retirement which will ultimately take place must be due to a [fol. 1527] cause, and I have named some of the causes which might bring about such a retirement. If the Exchange Building were totally destroyed by fire I would

charge off the retirement of the building against depreciation reserve (T. 1834), with any adjustments there might be for insurance. Insurance seldom covers the total loss. I do not know that it is a fact that respondent cannot insure its structures for their full value. I do not recall an entry on respondent's books which showed they made a profit by reason of having had a fire. As to whether the loss as a result of fire should be taken care of by insurance rather than setting up a depreciation reserve for it, in so far as that particular item was concerned, there might be some influence given to the service life, if you were protected against one of the causes of depreciation. However, you would have left all these other causes that must be provided for. The only effect that I can think of in the case of a building such as the Exchange Building would be an infinitesimal extension of service life. I cannot imagine that I would extend the service life to any extent at all, due to that one factor (T. 1835). If the respondent insures its structures to their full value and the premiums for such insurance are allowed in the operating expenses, and something was also allowed for that hazard in depreciation reserve, I would defy any man to find the duplication. I think it is a pretty far-flung theory, if you try to figure duplication on that. A fire or accident of that kind always occurs prior to the expiration of service life, and I think in one of my exhibits I showed that the retirement before the end of the service life was only partially provided for under the straight line method, and much less provided for under the sinking fund method. In making my recommendation of $100,000 per year for depreciation reserve, I have not itemized it so many thousands for the hazard of obsoles-
[fol. 1528] cence, and so many thousands for the hazards of inadequacy, and so on. I have never heard of any such allocation being made on the subject of depreciation. It is not a practical matter to outline a separate rate of depreciation for each possible cause that might occur. It is the depreciation itself as a whole that we are interested in, and when we determine a rate, we consider all of the factors that might cause the retirement of the property (T. 1836). My service lives are based on the retirement due to any possible cause, and while I list fire as one of the causes, I also know that in the past the Company carried insurance, and I assume in the future it may carry some insurance. That was

considered fully. Nevertheless, I arrived at my final rate for final service life, considering all other factors that may enter into the cause of the retirement (T. 1837). The same considerations apply to floods and tornado and the element of accident. In my direct examination I took the position that the cost of repairs should be charged directly as an annual operating expense, and the cost of replacements charged to depreciation reserve (T. 1837). I do not believe it is really necessary to distinguish between a repair and a replacement under the method that I have proposed here. You will recall that I determined approximately the investment cost of repairs that had taken place in the past. Now, if at any time, material is replaced in the course of a repair, it is possible to determine with reasonable accuracy the investment cost of that material and to go into a reserve carried for that purpose. I see no reason why the average repairs over a series of years may not be used as a basis for repairs until they are shown to be inadequate, so that in addition to this retirement reserve, which is the $100,000 I have spoken of, we would have the annual replacement charge for such materials as are replaced in the course of [fol. 1529] the maintenance of the property. That would exclude labor items that are not represented by investment. Certain repairs would be made on a gate without replacing material. I would not consider that those were the type of repairs that in any way would be concerned with the reserve. However, if we replaced the entire gate, that would be a matter of record cost which could be allocated to the reserve. Now, the reserve might be adequate in some years and inadequate in others; and that is the purpose of a reserve, to equalize expenses. And that is all that this repair reserve would do. I would have a repair reserve in addition to a depreciation reserve. Then, if we, by accident or otherwise, used the wrong (T. 1838) reserve, it would not affect the annual operating expenses in any way, because it would equalize, as we went along. The two reserves might be combined. No objection to carrying one depreciation reserve, one part of it being made up of replacement costs and the other part being made up of retirement costs. If I carried one reserve to which was charged the repairs as well as replacements I would not recommend that only $100,000 annually be placed in that reserve. The $100,000 reserve that I spoke of was a retirement reserve. A repair reserve

would be something in addition to that. That would be represented, roughly, by the average repairs during the past six years reduced to the material basis. I presented Respondent's Exhibit No. 129, where I had reduced these repairs to a material investment basis (T. 1839). In other words, I excluded labor items which might be termed ordinary maintenance labor, or labor items which were in excess of the original investment labor.

When you make a repair, it is generally necessary to expend labor in taking out the old part, and then additional labor in restoring the new part. The additional [fol. 1530] labor in restoring the new part is generally higher than the original investment labor, and certainly the labor of taking out the old part is something that did not appear in the investment at all; but my thought was to reduce this material replacement to a cost of material and labor represented by the original investment, and use that as a measure of the proper reserve for repairs. If a hook on a gate was pulled out and was replaced on the gate that would be a straight operating expense and have nothing to do with this repair reserve. I would not set up any kind of reserve for that (T. 1840). That would be ordinary maintenance expense. If a board on a gate had become decayed and the management decided that it should be removed and a new board put in, that would go as a repair reserve until the replacement amounted to something in the nature of an entire area that was being replaced, or something like that. But assume the company has taken that it would be a repair reserve, that matter would not be gone into in the minute detail that you have mentioned, because it is not necessary to do that. You would have your material and supply charges for an entire year, for instance, or an entire month, depending on the basis of accounting. That would be adjusted so as to be handled through this reserve. It would not be necessary to make an accounting entry for every board moved or anything of that kind. In the replacement of this board I would charge the cost of the board, plus the investment labor, to the repair reserve. As I recall, one of the inventories, I don't know whether it was Mr. Kosters' or Mr. Henrici's, used a figure of $55.00 (T. 1841) per thousand for lumber. That is made up, as I recall, of $30.00 material and $25.00 labor, something like that, anyway.

That was the investment cost or present value of that labor and material in that board and that labor item is all I would [fol. 1531] use, regardless of whether the actual labor spent on taking out the old board and putting in the new board amounted to $100.00 a thousand. It might very well. I would use the same ratio of labor to the material cost as I found either in the investment or appraisal, whichever was used, as the basis. The excess labor cost I would charge to the annual operating expenses (T. 1842). The service life method is usually the foundation of any depreciation reserve. There have been other methods adopted; for instance, the method of hours of use, or some such method of that kind, but, in general, the straight line or sinking fund method is based primarily on the service life method. I based my recommendation of straight line depreciation on service life or service lives, and Mr. Bachmann based his estimate of the sinking fund depreciation reserve also on service life, but there is some difference in the length of the service life estimated for particular units of property as between Mr. Bachmann and myself (T. 1843). In my inspection of the property I found that it had been and was being kept up in good condition, what might be termed "normal operating efficiency." There was no deferred maintenance observable which would affect the accounting depreciation. I would say that the elements of wear, tear, rot, rust and decay were operating to a normal extent. As to obsolescence I would have to say that the operation of that element was normal. There is nothing to indicate that it was unusual in any way or different from what might be termed average. I am acquainted with the Transit House Hotel and the fact that it yields a very low gross return to the respondent (T. 1844). I do not know as a fact that the hotel is patronized principally by a class of patrons who do not desire the features that we customarily associate with a modern hotel. It does seem reasonable that the shippers of livestock might [fol. 1532] desire to get along with as cheap accommodations as possible. I think that is a reasonable assumption, and, also, to be near the scene of their negotiations for the sale of the stock. It might be that on that account they would be willing to accept less pretentious accommodations than they would if they were on some other business in the city of St. Joseph. As to whether I regard the element

of obsolescence as operating normally in that building, I would say "yes", and, to an extent, "no," because I think that is very possible that obsolescence has been increased there, in late years, due to the change in the character of the transportation of livestock. It is perhaps easier for a seller of livestock to get out of the city than it was when he was shipping by rail and handling his stock that way and then leaving himself on a train. Now, he may come to the city in a truck and also leave by truck whenever he feels like it. To that extent, there would be less patronage possibly of the Transit House (T. 1845). It is possible that the element of obsolescence is working in that building a little bit more than the normal degree. There is no direct way of measuring that. I would not measure it by the income entirely because that is subject to fluctuations, of course. I think that the general tendency might be to reach a point where possibly that Transit House might not be required. It is very possible it may. When I use the word "normal" I am not necessarily thinking of the common experience of commercial hotel properties in cities. I do not know that the Transit House has ever been of a status of an ordinary commercial hotel. I think it was built, if I understand the history correctly, to accommodate the buyers and sellers of livestock, and I doubt very much if at any time in the thoughts of the owners of the property, it was to be a paying investment to the extent that a hotel now in the center of the city would be. As to [fol. 1583] the kinds of buildings or structures from which I would draw my idea of the normal experience of the Transit House in determining the element of obsolescence, obsolescence of course, is the thing that might come to a building at a time which cannot be definitely foreseen, but I think normal experience in any class of property, such as a building, has indicated that a certain percentage of retirements is always due to (T. 1846) what may be termed obsolescence. Now, unless there is some very unusual economic factor that is working, I would say that we would have to assume that the progress of obsolescence was normal. I would say that just as soon as you have a very definite indication of some factor which might produce obsolescence, then you have a slight departure from normal. I would recognize that one of the principal features of the element of obsolescence which brings hotel properties to the end

of their service lives is the matter of growing old-fashioned and the public preferring a modern up-to-date hotel in a commercial or business center of the city, but just as soon as you get beyond what might be termed the normal range of hotel business, you always encounter special conditions. If you think of a hotel in the slums of the city that factor would have very little influence on developing obsolescence. Similarly, we have in the Transit House a hotel in a situation peculiar to itself (T. 1847). I understand that the Transit House is very adequate to the demands made upon it in so far as space is concerned. I believe it is true that the principal trouble with it as an income-producing property is that it does not have enough patronage to keep it reasonably well-filled. The rates charged, of course, are set at a very normal figure. The element of inadequacy is present only so far as you can observe it at the present time. I cannot prophesy as to the future regarding in- [fol. 1534] adequacy, only as indicated by the present operation we could say the statement was correct.

I think the Exchange Building is well and adequately maintained against elements of wear, tear, rot, rust and decay. I see nothing that would indicate a departure from normal over a period of years (T. 1848). From an operating standpoint, considering the element of obsolescence alone as it relates to the Exchange Building, I would not think that building is comparable to the office buildings in the down-town areas of cities because the character of business there is dependent entirely upon another industry. Down-town office buildings occupied by doctors and lawyers and business men are dependent upon numerous classes of business. This particular building is dependent upon a particular class of business. It frequently happens in cities that there is an office building that is apparently tenanted, and the building of a more comfortable and convenient modern, up-to-date office building causes the tenants to move out of the older building and seriously affects its business, and even affects it to the extent that the owners decide to tear it down and build a modern building (T. 1849). At the present time there is no building other than the Exchange Building that would furnish the same facilities and be in the same strategic location as the present Exchange Building. If any other building were erected in the same strategic location, so far as I know it would have

to be on respondent's property (T. 1850). In the built-up portions of cities generally the office buildings are built upon the particular lot that has been purchased for that purpose. If the building becomes inadequate, and the structure is not strong enough to take on additional stories, the owner wanting to make it more adequate has to destroy the building if he decides to build on the same site. In a majority of cases the older structures are not strong [fol. 1535] enough to take on additional stories. I think it is frequently the practice for a good business man to construct his foundation and lower walls so that they can be added to if ordinances will permit it. That is not an unusual practice in buildings built within the last ten or fifteen years, but twenty-five or thirty years ago that practice was not so prevalent. It happened occasionally, though, even then (T. 1851). Many office buildings which have come to the end of their lives particularly in cities, have been torn down because they were inadequate, but that has always been combined with obsolescence, to my mind. The idea that a little more attractive and more modern building is required always goes along with the inadequate feature of it, with removal. I have observed that respondent has erected an Annex to the Exchange Building. I was not informed as to the exact reason for this construction. It is possible that larger space was needed (T. 1852). The area around the building is not unusual for a building of that type. I think that in separate office buildings, I have seen the same situation in the grounds of large manufacturing companies. The grounds around an office building are left vacant possibly for the purpose. If the building becomes inadequate, and the area there similar to a man's lawn around his house. There is a lawn on one side of the Exchange Building, I believe; back of the building there are low-cost garages, livestock pens and structures of that kind. If the Exchange Building became inadequate it would be possible to build an annex for expansion without wrecking any high-cost proper in so far as area is concerned. I think that at some of the stockyards there have been additions built to the Exchange Building, and at others the Exchange Building was wrecked and a new one built, replacing the old one. With respect to this latter, I am thinking particularly of [fol. 1536] Omaha. I do not recall *of* any large stockyards

other than Omaha that has erected a new Exchange Building within recent years, but I know that one was an outstanding case. I am not informed as to the date which the Exchange Building at Chicago was constructed. It apparently is quite new (T. 1854).

I gave the experience of industrial properties such as factory buildings, coming to the end of their service lives weight as a guide in making my estimates of the service life of the respondent's property in a very general way only. Of course, I have had knowledge of various types of buildings, constructed of certain materials, and, in any particular case, it is absolutely necessary to know the circumstances in that case. Industries retire buildings for innumerable reasons, and it would have to be the facts of the particular case that would govern the use of any particular service life of the building owned by an industry (T. 1855). I think that two large factors which have brought about retirement of factory buildings in this country are obsolescence and inadequacy during what might be termed the period of industrial expansion, but we have now apparently now passed that period and are back to a period that is similar to that which went on for 40 or 50 years before, when that was not true, that many factories continued to produce the same products year after year and retirements of buildings would be due to other causes than this expansion program that has been so prevalent in the last 8 or 10 years. There would be probably instances where you could select factories which were built 40 or 50 years or even 60 years ago which are operating in the same buildings with very little change other than just upkeep. The advance of the arts, especially the mechanical arts and in inventiveness, has caused factory buildings to [fol. 1537] be erected, stand a few years, found to be inadequate or not equipped in the most modern way, and then destroyed and other buildings rebuilt. In connection with that portion of the industries which have become prominent, we will say, since 1905 to 1910, if we take the industries that were operating from the time of the Civil War to 1905, we would find the change was remarkably uniform, but with the introduction of more electrical appliances and the automobile, we reach the stage of industrial development which was so extensive that it warranted these complete renewals and retirements of buildings, which a

few years before had been thought to be absolutely adequate, but, if we stuck to our old industry prior to 1905, which did not include those newer developments, I think we would have found a much smaller change. It has frequently happened that one of the things that brings a factory building to the end of its service life is the going out of business of the owning company by reason of insolvency. I think that is especially true since the World War. It may be true that the stockyard industry is one of the more stable industries. There are a great many others that, in (T. 1857) magnitude, are equal to or greater than the stockyard industry, that have been fairly stable throughout the same length of time that stockyards have been operating. I do not know of any stockyards which have gone out of business on account of insolvency. As to reorganization of stockyards, in this regard, there was a reorganization of the yard here at St. Joseph, before the present stockyards was placed under its corporate management that it is at the present time. I do not know the reason for this reorganization. I do not know of any yard which has gone out of business by reason of insolvency and ceased to exist as a stockyard.

I do not know of any of the rules of the Bureau of Internal Revenue which state definitely that the straight [fol. 1538] line method of computing depreciation reserve should be used, although I do not know. I do know that they never have approved adjustment of depreciation (T. 1859) in the corporation's returns unless it has been on the straight-line method. The tax payer computes depreciation reserve on the straight-line method with the thought that if he does not it will not be approved by the Bureau, and that is the result of experience with the filing of tax returns to the Bureau. Depreciation there is calculated on the basis of the original cost of the property, or its 1913 value. As far as I know when depreciation has been set up on the tax returns to the extent of one hundred per cent of the value of the asset, the Internal Revenue Bureau does not allow any further depreciation to be set up on that asset. Any deduction from gross revenue is an advantage to the tax payer. Of course, the greater the deduction, the more advantageous it is, but the Bureau of Internal Revenue draws the line as to how great that deduction may be.

They limit the rates that may be used and introduce other factors that would limit the amount of that deduction. It is not left entirely to the tax payer (T. 1859). I have known of cases, I cannot cite you what they are from memory, where tax payers claim that the method, the annuity method, or some other method, I forget the exact name that was applied to it, but it was a method that would give the tax payer a greater deduction in the later years of the property, was recommended, and that the Bureau of Internal Revenue turned that down.

I used words something to the effect that respondent's depreciation experience prior to an order fixing the rates would have little or no relevancy. The idea there was that prior to the regulation, the corporation might have been influenced by some factors which might not be prevalent in a property that was under regulation by the Secretary [fol. 1539] of Agriculture. I understand that the Secretary of Agriculture's power of regulation over this property started in 1922 (T. 1860). It seems to me that until the Secretary prescribes a rate order of regulation the company was still operating under its own methods and desires. I think Respondent's Exhibit No. 120 which I prepared sets up the experience of the present company from the time it began accruing depreciation until the present time. I believe that is the only exhibit which sets up experience prior to 1922 (T. 1861).

The thought that, if the determination by the Secretary that certain of respondent's property is not used and useful be upheld by the courts, would bring that property to the end of its useful life, may be explained this way: certain property, which I designated, that seemed to me had of necessity reached the end of its service life with this corporation and reached (T. 1861) the end of its service life as a rate base. I do not know that that influenced me in my opinion that the company's experience prior to the issuance of a valid rate order would have little relevancy in determining the needs for depreciation reserve. I was influenced by the fact that the necessities for the depreciation reserve may have been any one of a number of reasons other than ascertaining the true operating expenses to assess against the public for the use of the property. The public, under regulation, pays for the expiration of service life, just the same as it pays for the maintenance of the

property. That is a part of the rate that is assessed against the public. Prior to regulation, the corporation may fix fair rates or it may not fix fair rates. As long as the public will pay, they do; it is, in plain language, none of the business of the public, but those rates are disposed of and the corporation may, for its own accounting purposes, charge no depreciation or it may charge very heavy depreciation. [fol. 1540] Under regulation, however, the public does pay for this expiration of service life which is a part of the depreciation charge (T. 1862).

In explaining my thought as to the fundamental reason for the necessity of setting up a depreciation reserve, or at least making allowance for annual contributions to such a reserve, it seems to me that the public always is required to pay the fair cost of operating the property and, in addition, give the stockholders, the owners of the corporation, a return on their investment; and to also receive sufficient compensation so this investment stays as it originally was, without impairment. In order to do that, he must receive enough for normal maintenance and, in addition, receive enough to provide a fund which will adequately pay for the retirement (T. 1863) or replacement of any of its property (T. 1864). From a legal standpoint, I don't know whether the Secretary has any control over the depreciation reserve after he has once made the allowance as an operating expense. Relative to my statement that respondent's property had about reached the turnover stage, that was with respect as I recall it to the property I classed under the head of stockyards' buildings and improvements, which included the pen areas. The turnover stage is a phrase that I have used a number of times and I have heard it used by other experts testifying on the subject of depreciation, it being the stage of renewals of the property of a composite nature where the renewals may be termed to be practically normal or uniform, and that would be true of pen areas (T. 1867) where the service life was assumed for the pens themselves as rather low and the age of the property was such that a great deal of it had already been renewed, so that we get to the point where renewals of renewals finally goes on to infinity and it reaches a uniform stage as a whole. I would expect the direct renewals [fol. 1541] to be about the same each year. That, of course, has nothing to do with major retirements. My testimony

along this line had to do with the pen areas. A major retirement in the pen area not covered by renewals which had reached the uniform stage, I would say would be a section or block of pens retired at one time. I would hardly confine it to a single pen, which is rather a small unit (T. 1868).

In determining the matter of the annual allowances to depreciation reserve, I do not think that the Secretary should give any weight to actual depreciation existing in the property or a comparison of the condition per cent as shown in Mr. Henrici's appraisal of 1932 with the American Appraisal Company's appraisal of 1922, that is, the comparison of the condition per cent of the property as found in those respective appraisals. The point I was making was that the physical condition determined for valuation purposes very probably has absolutely no relation to the accounting depreciation accrual which is made annually. It would be a coincidence if the two did agree at any time, and the great probability is that there would be no direct relation at all. Assuming that the same engineer had found the condition per cent of the property in 1922 to be 85, and in 1932 to be 85, and that he had a record of all that was spent during those ten years in repairs and replacements, no weight should be given to those two things taken together in determining the annual allowance which is necessary for depreciation reserve in the future. The physical condition, as the engineer determined it, would be a matter that would be a physical fact, but the records of replacements and renewals, of course, are matters which receive consideration in determining the rate (T. 1869).

My objection to a comparison of the condition per cent [fol. 1542] as found in 1922 and 1932 is not based on the fact that the appraisals were made by different engineers, but that would be an additional objection. As I understand that theory there would be no need for a depreciation reserve, if the facts as you have stated show that there was no change in condition per cent over that period. Now, that probably illustrates the point very clearly, that the depreciation reserve might be four per cent of the value of the property during that entire time and the very replacements and renewals that took place might exhaust the four per cent. It would be perfectly possible that that could take place; but the four per cent rate, if properly determined, might have been exactly the correct rate, but

the relation of those two physical condition per cents could in no way be used to determine the rate of depreciation. Assuming that between the two dates, 1922 and 1932, the same engineer had found 85 per cent condition and that the company had spent $500,000 in the ten-year period in repairs and replacements, I would not say that the average annual expenditure of $50,000 to maintain that stable condition should not be given any weight in determining the annual amount necessary in the future to accomplish the same purpose. It would have some weight (T. 1870), but the $50,000 a year only provided for such retirements as did take place, and possibly there were no actual retirements as such; there was no provision in there for future retirements of, we will say, even a larger property in 1932 than was in existence in 1922. There is something in addition to the $50,000 that must be added to provide for future retirements.

Paragraph 106 of the Secretary's order in this proceeding indicates that even though the condition per cent of the property were found by engineers to be the same, at dates widely separated in point of time, that there would [fol. 1543] be a need for depreciation reserve. The statement that I had particular reference to was the last sentence of that paragraph 106, and the relation of that to the constant condition the Secretary referred to as influencing his determination of a low depreciation rate (T. 1871). I stated that if I was going to use a study of actual experience to determine the amount of depreciation reserve necessary, that the study would have to cover a period of approximately twice the life of the longest lived asset. It would give a fair range, then, of these turnover periods of all items of property having varying service lives. Now, I can illustrate the point perhaps a little bit better by referring to Respondent's Exhibit No. 130. If I had carried Respondent's Exhibit No. 130 on to 120 years instead of 100 years, I would have reached the point where the maximum retirement of these pieces of property having various service lives would take place. That is, at 120 years we would get property with a 15 year life, 20 year life, 30 year life, 40 year life, and 60 year life (T. 1872). Everything would retire at 120 years all at once. Now, that would be the turnover period where we would get what might be termed the minimum condition just before retire-

ment and similarly the statement that I made referred to the maximum life. I believe I used about 80 years. Cast iron pipe, having an 80 year life, is the longest lived asset. When I say twice the life, I refer to twice the estimated life. Service lives are generally stated as average service lives, so that in a piece of property such as a cast iron pipe water line, there would be property retired at exactly 80 years; if the assumption was correct that there would be a portion of that property retired somewhat less than 80, and another portion retired at a period somewhat greater than that, but the average would be the 80 that was assumed. Before [fol. 1544] the ultimate life period was reached, the life might be demonstrated to be either too short (T. 1873) or too long, so that we would have to further vary the assumption to accommodate the conditions we found as to the actual life.

If the Secretary should use the actual experience method of determining the depreciation reserve, observation of the operation of the entire property for 160 years would give him the best basis that I know of. I think that method would be very inaccurate up to that time. I can explain why twice the life of the longest lived asset, rather than one and one-half times the life of the longest lived asset, should be used (T. 1874) in this way. The pipe line that we are speaking of that has a life of 80 years consists of joints of cast iron pipe generally 12 feet in length, which means a large number of separate pieces of pipe. After the expiration of one year, it is very possible that one of those joints of pipe has to come out and be replaced. That particular joint you take out has an average service life of 80 years. It may come out in one year or it may come out in 160 years. Now, we come on to the next joint, and possibly it will last 20 years before it comes out, and we replace it with a joint that may again last 20 years or 160 years, or only one year; and we go on to another joint that has the exact life of 80 years. When it is replaced, it again may have a life of 80 years, or 160 years, or one year, or 20 years. It is that combination (T. 1875) of lives that has to work out mathematically before you have a real true picture. It is a problem in calculus, that can be worked out with mathematical accuracy, showing the actual renewals upon renewals of a large number of similar objects (T. 1876).

When I spoke of depreciation reserve accruing to the point where it equaled the investment, and other times [fol. 1545] where it equaled the value, I probably had in mind an alternative base for depreciation. A great many books are made up on the basis of investment. This company's books are on the basis of investment. Now, the courts have stated present value as a basis for replacement, so that, at some future time, this company might use present values. I was just using the words as an alternative proposition. In all my exhibits for purposes of illustration, I used the investment of the company. I don't recall that I intimated at any point in my testimony that the Secretary should make allowances through depreciation reserve which would be adequate to cover not only the depreciation but also depreciation which has occurred in the past and for which the company may not have set up an adequate reserve in the past.

Adjusted service lives, as I have suggested, are all somewhat greater than those used by the company, which would indicate that up to this time at least that the reserve was adequate (T. 1877). It is my view that the allowance made by the Secretary should be sufficient for the future without any regard as to whether in the past the company has, or has not, set up sufficient, insufficient, or more than a sufficient reserve. The point that I wanted to make was a sufficient reserve for the future. In my opinion the rates, as I fixed them, would produce that annual allowance which was adequate to meet the future needs. The experience of the company with respect to the adequacy or inadequacy of the reserve it has set up in the past should be given weight in determining what is necessary for the future, only in this way. If the company had no reserve in the past, it would seem to me that property of this age should be protected by sufficient reserves in the future, so as to meet its ultimate return. As I stated, in my opinion, the reserve of the past has been adequate to meet the necessary [fol. 1546] retirements at the present time and provide a safe fund in the future (T. 1878). The investment, or the present value, as the basis for the determination of the depreciation allowance is the same irrespective of whether that allowance is computed on the straight line or the sinking fund method. The service lives of the various units of property would be the same, provided they are made

by the same man for the same purpose. There would be nothing about the adoption of one or the other methods of computing depreciation reserve that would cause one to change the estimated service life, and the annual rate of depreciation would remain the same. The actual amount allowed as an operating expense for depreciation reserve would be different if you used the sinking fund than what it would be if you use the straight line method, and from the time the allowance is made the two are distinct in character and use (T. 1879).

It is not a correct assumption that whether the allowance be made on the basis of the straight line method or the sinking fund method, that the reserve will be invested in outside enterprises, used in the company's own business, or paid out in dividends, because the use of the accrual that is made under the sinking fund method is confined absolutely to a definite earning, and it must be invested where it will make that earning. The use of the fund accrued, under the straight line method, is not restricted in any way. It can lie idle if the stockholders so desire. Assuming that the amount of $1,000 was set aside for depreciation reserve on the straight line basis, and $750 on the sinking fund basis, it could allow the $1,000 to remain absolutely idle if it wanted to. It would be the option of the stockholders what became of the money. There are a great many depreciation reserves that are represented, in part at least, by balances of cash maintained in the treasury of the company. Those bal- [fol. 1547] ances are not used down to the dollar; they are always left as a balance (T. 1880). I do not know of any company that takes its annual allowance for depreciation reserve and makes no use whatever of it. That would be the other extreme. The main point I want to make there is to show a distinction between the two methods of setting up a reserve; that the straight line reserve is the property of the stockholders without restriction; and the sinking fund is not the property of the stockholders to do anything with, other than to let it accumulate at the fixed rate of interest that has been provided. If the respondent here received $1,000 per annum as a straight line depreciation allowance, it may make use of it either in its own business to expend or improve structures or as working capital, or for the purposes for which the sur-

plus account is used, or to invest it in outside investments, but the distinction is that it is not compelled to, there are no restrictions on it at all. That is money that has been paid to it by the public to do with whatever it chooses. Assuming that the reserve is used and that it yields a return, that return belongs to respondent and it can do with it as it pleases up to the retirement of the property. The return is a matter of its concern only (T. 1881). If the company paid the allowance for depreciation reserve to its stockholders as dividends, and did not have the money to make replacements when the time for replacements comes, it would be considered poor business management, because the very purpose for which it has been accrued is to make these replacements. It is its responsibility, however, if it does do it. Referring to the $750 representing the annual allowance to depreciation reserve on the sinking fund method, used for illustrative purposes, it is my opinion that the company has got to invest that money just the same as though it was paid to [fol. 1548] a bank for deposit to bring in a stated rate of interest, and the company has no right to touch it or to do anything with it, other than earning that stated rate of interest, and then the return on that investment must be immediately reinvested so that it will compound and bring the necessary return. I think there is no designation as to the nature of the investment, but the fact that it must draw that interest is the controlling factor in determining the amount (T. 1882). It would not necessarily have to be invested outside of respondent's own business. It would be invested where it would bring in a return, but the return is fixed. If respondent kept it in its treasury and used it for working capital purposes, respondent would then be under the necessity of charging expense, the same as an operating expense, sufficient in amount to make up that amount of interest that was supposed to accrue annually, or semi-annually, or at whatever period had been fixed. Assuming that respondent needed to expand its pen facilities in order to care for its business, and that the expansion did not mean respondent was getting any more business or revenue but a different kind of business and needed more room, the $750 depreciation allowance on the sinking fund basis could be used for that, but respondent, theoretically at least, and, of course, the sinking fund is

strictly a theory, would be compelled to account separately for that $750, and to show the income and expenses in connection with the new pen area that was installed for the $750, and if there was any deficiency in the earning over and above the amount necessary to meet the interest requirement of the fund, respondent would be under the necessity of carrying through its regular operating expenses sufficient money so that the fund could be replenished at the proper time (T. 1883). I think that the accounting under the sinking fund theory should be entirely [fol. 1549] separate from all other accounting. That fund is not the property of the stockholder until it is paid to him to cover property retired, and it cannot be paid to him for property retired until it has accumulated through these compound interest additions enough to cover the retirement (T. 1884).

If the Secretary of Agriculture had prescribed this method, I would say that the Secretary of Agriculture was responsible for the accounting of the fund, and that the fund itself should be entirely separate as an accounting matter.

I do not have any exact record of what respondent has to pay in the way of interest for the money that it borrows, and I don't recall having any information that shows the rate of interest it paid for borrowed money. I don't know whether it could borrow money as low as 5 per cent (T. 1885). If it borrowed money and paid 5 per cent interest, that would be a financial expense to the company (T. 1886). If the company, instead of borrowing money from some outside source, used money that it had on hand, such as its depreciation reserve money, I think there would be a distinction between the two, possibly. The use of the money in its regular operations might be accounted for to the fund by an offset of the interest which might have been paid. It would have to be accounted for to the fund as an interest income to the fund. The company could use that money in its business and account to the fund for the interest on that money, and the interest would be an expense item that would have to be set up as a definite expense. Under the straight line method of setting up depreciation reserve, the company itself obtains the benefit of any income that is derived, up until the time of retirement. It has the funds which are its to use in any manner

in which it sees fit, and the principal of the sum, in theory [fol. 1550] at least, is sufficient to take care of the retirement (T. 1887). You do not need to add to that fund by income on it in order to cover the retirements, under that theory. Under the straight line theory, it is the company's own business to do as it pleases with the money which is the income on the investment. Under the sinking fund method the rate payer derives the benefit from the income, such as it may be, from the principal which is set aside, but the rate payers are paying on the undepreciated rate base when they do that. Under the straight line method, the depreciation must be present in the rate base (T. 1888). It is my understanding that the Secretary in his order in this case was considering a depreciated rate base in connection with determining his depreciation allowance (T. 1889). The Secretary in that order made an allowance of $102,000 to cover repairs, maintenance, replacements and reserve for depreciation, and stated in his order: "It is not necessary to decide whether the sinking fund or straight line method is the proper method of computation for there is a more certain and definite guide in the respondent's actual experience over the past 6 years, as outlined above." But that gets us back to the proposition of the rate base determined by the Secretary, which was a depreciated rate base. The Secretary prescribed rates on a depreciated rate base (T. 1890). The Secretary, in fact, uses a sinking fund method in determining the depreciation allowance, and the rate base is a depreciated rate base. The two cannot go together. The Secretary used practically the recommendation of the witness, that is the sinking fund. It certainly was very queer that there was such a coincidence, that is about all I can say about it. The Secretary did not allow enough to cover depreciation under the straight line method (T. 1891). Mr. Bachmann's recommendation in the former hearing was based upon the cost of reproduction new [fol. 1551] as agreed upon by the engineers. Now, there is a distinction between the basis of the calculation of the depreciation accrual and the value used for rate making purposes (T. 1892). The value upon which rates are based, if the sinking fund method of accrual of depreciation is used, must be the undepreciated value. In other words, the rates cannot produce the fair amount for the depreciation accrual unless they are based on an unde-

preciated basis or value. My position is that if you are going to use the sinking fund method to set up your depreciation reserve, then the rates themselves should be based on the cost of reproduction new and not the cost of reproduction new less depreciation. The rate base is as of the time of the investigation and not the date at which the Secretary's regulatory power became effective. I stated that the straight line method of setting up depreciation goes hand in hand with a depreciated rate base (T. 1893). For illustration; if the Secretary were to prescribe rates in 1933 on the basis of the cost of reproduction new less depreciation of $3,000,000, and ten years hence, without any additions to the property, he prescribed the rates on cost of reproduction new less depreciation of $3,000,000, so that in the ten year interim there has been no depreciation on the basis on which the Secretary prescribed rates, I would still say that there should be the straight line method used in setting up depreciation reserve. The sinking fund method and an undepreciated rate base would have to go together; they are not theoretically correct unless they do, but I do not think it is practicable and, therefore, it is improper in any event to use the sinking fund method (T. 1894). As a matter of theory it might be worked out, but I would not adopt it under any circumstances because of its impracticability. I do not agree with counsel for the Government that the whole difference between the straight [fol. 1552] line method and the sinking fund method of setting up depreciation reserve is comprised in the answer to the question as to whether the company or the rate payer shall profit by the income derived from the use or investment of the depreciation reserve money. I do not think that is the question at all, and I do not think that is the whole difference between the two theories (T. 1895).

As to whether the expiration of service life will be reflected in the existing condition of the property, the expiration of service life is a fact that exists, but in so far as it is apparent in the physical change in the property, that is another thing. The expiration of service life is perhaps not so noticeable as the wear and tear due to decay and rot. The problem of determining the proper allowance for depreciation reserve in respect to respondent's property cannot be the same thing as determining

the allowance for depreciation reserve for railroads, because for railroads (T. 1896) the Interstate Commerce Commission, which is required by law to determine the accounting procedure, fixes rules and of course any accrual for depreciation under those rules is controlled by the Commission. As I understand it, this accounting accrual that we are discussing here is not prescribed by any rules fixed by either the Secretary or by the law. I would not agree with you that the premiums paid on life insurance are in effect an annual allowance for a depreciation reserve set up against the life of a person. I do not think there is an analogy there. That is just an expense that is proper in any accounting procedure, and it is distinct from any depreciation allowance. I cannot see that the two are comparable at all, except that they are both items of expense. I go that far, and any maintenance charges are also an item of expense (T. 1897). The insurance theory is that the sum of all the premiums paid in, plus whatever earnings they accumulate, will fully meet what-[fol. 1553] ever losses occur and furnish a profit to the owners of the insurance companies. The insurance theory is that the premium paid by the insured, plus the income from the investment of those premiums and the reinvestment of that income, and so on, will provide sufficient money to pay losses when they occur. Their reserves are in part made up of investments. They usually carry large sums of cash also. Their total income is invested. If it happens to be income from securities, you probably could not distinguish it from income from premiums (T. 1898). It is a part of their business to be constantly paying losses and to provide for losses. As to wherein the procedure of insurance companies whereby they must keep moneys constantly invested and the income from those moneys constantly invested, and must, at the same time, be taking moneys out of those funds to pay losses, differs in its difficulty as an accounting problem from accounting in a sinking fund depreciation reserve, where you would invest and reinvest and take moneys out to make replacements, as I see it, one of the first things I would think of is that for a particular property the payment of the premium is not accompanied by any separate accounting for that premium to which it relates or to which property it relates. The premium is bunched with all the other premiums that

are paid in, and whenever a loss does occur, that comes from a general fund. There is no attempt to mark each separate fund by itself and see if it does accumulate enough to meet the particular loss on a particular property (T. 1899).

The regular earnings of the company are a matter of daily accounting, but the depreciation allowance is an expense item that is generally accounted for monthly. It comes as a deduction from the total earnings over whatever period is used for the accounting. If it is a month, it would be a monthly earning. In so far as the public con- [fol. 1554] tribution to the fund is concerned, the only place that this depreciation reserve money can come from is from the rates and charges of various kinds paid to the company from day to day by its patrons. In the straight line method that is strictly so. In the sinking fund method, it is partially so (T. 1900). If the sinking fund depreciation reserve allowance is made on the basis of investment every six months, that allows the company six months in which to accumulate the money to be invested. I do not know whether the company would have considerable money on hand which it would not be required to invest until the end of the six months' period of accumulation. That would depend on the nature of the earnings. If it was a prosperous period, it would have money. If it was a period of depression, it might be drawing on its working capital to carry on its operations. I know there have been fluctuations in the income from day to day and from month to month (T. 1901).

I read to some length from a report of the American Society of Civil Engineers in which they disapproved of the sinking-fund method of setting up a depreciation reserve. The membership of the society is made up of civil engineers engaged in the practice of the various branches of the profession (T. 1901). It is the largest society of engineers in the world and embraces engineers of standing in nearly all branches of the profession, as well as certain noted scientists. A great many members of the American Society of Civil Engineers are in the employ of regulatory commissions. The Interstate Commerce Commission has many of them, and various State commissions, with which I am familiar, have engineers who are members of this body. It might be in the society that the will of the majority governs

in the passing of resolutions and the adoption of reports such as I read from. That might be true. The opinion of [fol. 1555] the society is, of course, a matter of scientific study as to these facts. I recall the question in my direct testimony where I likened the allowance to depreciation reserve on a sinking-fund method to a patron paying less than the proper charge for feeding his livestock (T. 1902). As to the analogy between the two, it seems to me that the point there is that when a thing is paid for in its entirety, such as the service rendered in caring for stock or paying for hay, the transaction is completed; and that is the method followed in the straight-line method of depreciation. The user of the property has, in effect, paid for the prorata share of the life of that property, represented by the annual charge related to the expiration of this service life. Now, if he paid the Stock Yards Company only a sum for his hay which, if placed at interest and compounded even for a single year, would produce the proper revenue item for that hay, he would be doing exactly the same thing as he does under the sinking-fund method, the sinking-fund method providing that he shall pay only a part of the cost of property, and then let the fund pay the rest. The producer or the customer, in other words, has only paid a part of the expense, and the owner of the property has been compelled to earn the difference by another transaction.

Assuming that an asset has an estimated service life of 10 years, and the cost of reproduction new is $10,000 (T. 1903), if the depreciation reserve account is set up on the straight-line basis, the depreciation account will not exactly keep pace with the actual depreciation which occurs in the property. The physical depreciation and the accounting depreciation are separate things entirely.

With reference to the tax rates applicable to investments in depreciation reserve moneys on the sinking-fund basis, I am simply assuming that those are the percentages as determined by law, and that they should pay on earnings [fol. 1556] of that kind (T. 1904), without following through as to whether the taxes will be paid or will be remitted, or what adjustments will be made, but those, as I understand it, are the legal rates applicable. I do not know whether they will ever be paid. The assumption is that those being legal rates should, of course, be paid. If they are not paid, I would not go so far as to say that they will not impair the

investment, because, as I understand, those are the legal rates. If they were evaded illegally, I can understand why they would not have to pay them, but I do not understand that there was any suggestion of disobeying the law. If the Secretary, in setting up allowable expenses allows in the item "Taxes" an expense covering all personal property taxes paid, he deals with past experience (T. 1905). This testimony of mine relates to the future accrual of the sinking fund. Past experience had no such sinking-fund requirement (T. 1906). Respondent actually has money invested in outside securities, and I have shown that in Respondent's Exhibit No. 131. As shown by this exhibit, the average earnings for the year 1932 on respondent's investments in loans, notes, bonds, stock investments, and nonearning investments was 3.62 per cent. The first item in column 16, referring to the year 1932, is loans of $125,608.70 and the interest return was 3.69 per cent. A large part of those loans were made to Swift & Company. I think practically all of them. That interest rate is reduced to the annual rate (T. 1907). During the various years there were rates as high as 5 per cent and some as low as 3 per cent. The loans were actually for short periods, and so in order to get a comparable average for the entire year, they were computed on a yearly basis. For the year 1932 the lowest interest rate was 3 per cent, and the highest 4 per cent. The total return of $4,636.15 was made up of the [fol. 1557] sum of three amounts at 3 per cent, $706.67, $902.50 and $56.67. The balance of that sum was at 4 per cent, except for one loan of $50,000 for a short period, which had no interest allowance (T. 1908). That ran for 3 days.

Referring to Respondent's Exhibit No. 131 and the list headed "Nonearning Investments," they represent investments in stock companies which, during the period covered by this exhibit, did not render any returns. I do not know whether membership in the Grain Exchange and the Hay Exchange enables respondent to purchase its grain or hay on more favorable terms than it otherwise could and thereby constitutes in effect a return on the investment. The inclusion or exclusion of those items makes very little difference in the net result. It is shown by that line 10 what the figure would be if those items were omitted (T. 1909). The term "depreciation allowance" as used in my

testimony on page 1698 refers to accounting depreciation and not depreciation for valuation purposes. Accrued and actual depreciation referred to in the same sentence means depreciation that had actually accrued on the property and more. The accrued and actual, those two terms, taken together make up a portion of the accounting depreciation. We have to consider the actual depreciation and also the accrued expiration of the service life. The two together, plus obsolescence and other functional depreciation, make up the total allowance (T. 1910). Referring to my testimony on page 1698 in which I stated that the Interstate Commerce Commission, in its 1914 classification of accounts, made definite provision for certain depreciation accounting, and that the requirements of the Commission with respect to depreciation have been very definite, I would state that the method was not specifically set out in the classification. The Commission generally has approved [fol. 1558] only accounting on the straight-line basis. I have never heard of another method being used where the Commission had approved the accounting for depreciation.

Referring to page 1701 of my testimony where I stated, "Since these spreads are based on estimated service lives, it follows that on some units the charge or spread will be excessive, on others insufficient; but it is believed that the average obtained is fairly accurate; and, as data is obtained from time to time, the spread is checked up and, if necessary, corrected or some units terminated." That is the method which, in my opinion, should be followed, and I give effect to that opinion in my recommendations in this case by (T. 1911) examining all the records, and have discussed and recommended an extended service life. This company, as far as I know, has made no direct corrections since 1922. At that time, there was a slight change, I believe, in the rates that had been used for 1916 to 1922. By my statement on page 1702 of the transcript that, "The depreciation reserve, in itself, is a measure of the economy of the operation of a property, and the adequacy of the rates," I mean that depreciation reserve, after we have it effective at uniform rates for a number of years, shows the relation of the retirements and replacements to the source of the income, which is, of course, the rates and the reserve over a considerable period, and shows that the company has been

making its replacements as needed and keeps its reserve upon what might be termed "a stable financial basis." When I speak of measuring the economy of the operation of a property, I refer to the entire operation, in so far as it relates to maintenance. The adequacy of the rates, of course, provides the source for the depreciation reserve. If the rates were not high enough, the rate of return would be [fol. 1559] low, and it would be the policy of the company then to draw on surplus or some reserve to make up the difference until (T. 1912) it could secure higher rates.

With reference to my statement on page 1709 that if the repairs had not been made to the extent noted the ultimate service life of the property would have been materially shorter and either operating expense or depreciation charges would have been considerably larger, due to necessary retirements, I have made no estimate as to future repairs necessary to maintain respondent's property. I believe I did state that in so far as certain of the property is concerned, I think I had in mind the pen areas, the repairs of the property at the present time represented what might be termed "average repairs." Repairs of longer-lived property, however, I made no estimate as to what might occur in the future. If the company is limited to the expenses which it has made in the past in connection with its repair policy, I do not believe that the property will live out this estimated life. I think that the repairs on certain items of property will increase as we get nearer the expiration of the service life, but if those repairs are made as needed, I think these service lives are (T. 1913) fair and reasonable. As to the units of property on which I think repairs are increasing, the longest-lived property, the water lines, I believe that as we get near the expiration of service life there, we will find many more repairs are needed than at the present time, when the property is going along with a minimum amount of repairs. That would be true also of the larger structures, such as the Exchange Building and certain of the other property. The principal sources of failure of water lines is a leaking at the joints and a gradual rusting through some defect in the pipe. A perfect pipe would last a great deal longer than 80 years, but we know that in casting pipes, there are bubbles or other de- [fol. 1560] fects that may not be apparent for a great many years, which means that that portion of the pipe is thinner

than the other portion, so that the first rusting would take place at the thinnest portion. Now, the joint is generally a leaded joint; occasionally it is a cemented joint, and through various processes, possibly the action of water or traffic overhead would gradually lessen those joints so that after a number of years, we would find we had a leaky joint, which would have to be repaired, possibly without replacement of the pipe. In case of a leaky pipe, if the leak were substantial, it would have to be replaced (T. 1914). It is not always true that the amount of repairs increases on the units of property as they come nearer to the end of their service life. It is probably true on the long-lived property and not as easily discernible on the short-lived property. Very few units of property have heavy repairs during the first year. They usually reach an average state after several years' operation. On the long-lived property the heaviest repairs are required during the last years. That is not true of short-lived property. On the short-lived property, after it has operated a reasonable length of time, the repairs become fairly uniform.

In Respondent's Exhibit No. 122, referring to page 1719 of the transcript where it is stated, "I have shown in column 4 the recorded investment of the property retirement in each of the years (T. 1915), and in column 5 the accrued depreciation of that property up to the date of its retirement," I have taken the accrued depreciation as set up on respondent's books since 1922. Referring to page 1719 of the transcript, where it states that the retirements were actually covered by the depreciation accruals to the extent of 56.96 per cent at the time of retirement, that is because I started with the year 1922. Some of those units [fol. 1561] of property had been in existence for many years prior to that time, but there had been no depreciation accrued upon them other than I have shown here. The exhibit purports to show all the depreciation accrued during the company's existence on these particular assets. Between 1916 and 1922 no depreciation was set up for those assets, unless it is included here. I have in here whatever depreciation has been accrued on the books of the company since the date the property was installed that is directly allocable to those particular assets (T. 1916). I did not mean to state by any prior answer that there was

other accrued depreciation on these particular assets prior to 1922 that I did not include.

Referring to my statement on page 1725 of the transcript, "Thus, for any property retired before its service life has expired, there will be a greater differential in the accrued depreciation reserve under the sinking-fund basis than there will be under the straight-line basis (T. 1917). It is true that the accuracy of either the straight-line or the sinking-fund method, no matter which you use, is dependent on the accuracy of the estimates of the service lives for various units of the property; and if we assume that the service life estimated for any unit is wrong, then naturally the depreciation reserve allowance for that unit would be wrong regardless of the method of setting up the allowance, except as to the degree of the error. I think that we get not only the error in the assumption of service life, but we get a further differential in the sinking-fund method that we do not have under the straight-line method. With respect to the retirement method which you have spoken of as using past experience only, I think I would doubt whether that was a very safe method to follow. That would not involve estimated service life at all (T. 1918).

[fol. 1562] Referring to Mr. Bachmann's statement, "Now, the question of depreciation is divisible into two parts. The first is actual depreciation which results from wear, tear, rust, rot, decay, inadequacy and obsolesence, and the accrual of that actual depreciation in the asset itself to the extent of 100 per cent when it is retired. The second part of the question of depreciation is the provision which is made under managerial policy, and on the books of the company, and the accrual of this provision on the books to meet the actual depreciation which is being accrued in the asset" (T. 1919), the point I had in mind was the attempt to separate the actual causes of depreciation so that it would appear that they were divisible into two parts. Mr. Bachman enumerated all the causes under his first part, except that due to accident, and, in the second part, he brought in another factor which, to my mind, should not enter the discussion of depreciation especially under regulation, that is, managerial policy. I do not understand Mr. Bachmann's statement to be that the cause of depreciation has two parts; first the actual de-

preciation that is likely to take place; and second, the accounting means of providing a reserve for that depreciation. If that was what he intended, it is not clear to me. In my statement on page 1748, "The expiration of the service life of the units is an accounting matter only," I mean that is an accounting matter only because the expiration of a service life is not always an observable item. The naked eye cannot determine the exact expiration of service life merely by observation, but when we are accounting for it, we have a definite ratio we may apply (T. 1920). The expiration of service life, as I figure it, is simply the straight-line depreciation, the ratio of remaining service life to total service life, or the age to total service life.

Referring to the statement on page 1751, "It may be [fol. 1563] noted that under appraisals made in different years, there might be appreciation in condition per cent due to the introduction of new property through replacement," I did not know the amount of appreciation in terms of money as shown in Mr. Kosters' appraisal of respondent's property between the years 1929 and 1932. I recall that there was a greater condition per cent in the later years. I do not know how such an appreciation could have come about on this property (T. 1921).

Referring to my testimony on page 1754, "These can best be provided for through the straight line method of depreciation, since it is possible that the greatest accidents in the history of the company may occur during the early life of the units of property" and assuming an asset having a life of 50 years which was destroyed by accident within 5 years after it was constructed, the straight line method would more nearly approach the necessary retirement value of the asset, or take care of any accident that occurred before the true expiration of service life. We made an assumption of the service life for the use of either method, and as we go through the progress of years we are subject to this retirement by accident and at any time an accident does occur (T. 1923) we are better off under the straight line method than we are under the sinking fund method. That is the main point, and you are better off to the extent that the amount of the annual allowance under the straight line method exceeds the annual allowance under the sinking fund method. Referring to the

statement on page 1755 which reads: "The rate payers of today are not paying their proportion of the cost of property consumed in service," the point I was making there was that under the method proposed by Mr. Bachmann there would not be a sufficient payment by the rate payers to take care of the actual cost or proportionate cost of the property consummated year by year, due to the ex-
[fol. 1564] piration of service life. I mean that assuming an asset having a 10-year life that one-tenth of its life expires each year and the principal amount allowed to depreciation reserve under the sinking fund method does not represent one-tenth of the value of the asset. One year's use is only represented by a fraction of one year's cost (T. 1924). Referring to the statement on page 1755 which reads: "This is the only way that future retirements can be fully protected," and also to pages 1 and 2 of Respondent's Exhibit No. 116 which shows retirements of about $175,000 in ten years and Respondent's Exhibit No. 120 which shows a total of about $1,250,000 to be used for depreciation reserve and to my recommendation of $100,000 per year for depreciation reserve which will mean that $1,000,000 will be set aside the next 10 years, it would be impossible to say what assets are coming to the end of their lives to consume the approximately $2,000,000 within the next 10 years, but we have a property here that greatly exceeds the present depreciation reserve, and, since it is a fact that the retirements in the past have been of such minor importance, it is very reasonable to assume that as the years go on, the retirements will increase much more rapidly, and it seems that for that reason we should make this ample provision for that future retirement, because we are not going to reach 100 per cent of our investment even under the $120,000 per year, because, just normal retirements would keep that down. We cannot know whether respondent's assets are such that $2,000,000 will be needed for retirements during the next 10 years, but I haven't limited it to 10 years. I am limiting it to the life of the property as a whole which is a great deal longer than 10 years (T. 1925). As to whether there would be $3,800,000 in the depreciation reserve and
[fol. 1565] what property would be retired to require all that amount, in the first place I think we are getting the matter a little confused because that reserve, after that

period of time, would not reach any such figure as you have stated. You are making the assumption that the reserve would go absolutely untouched and would accumulate at this rate until it reached that figure. Now, that is impossible under any theory of accounting that is properly carried on with respect to depreciation. There is going to be a large amount of that reserve extinguished through retirements and replacements. So that we are starting over again to accrue depreciation on property that is installed during replacements, and, if you refer to Respondent's Exhibit No. 130, that diagram shows that violent fluctuations might take place if retirements came at the exact expiration of the service life assumed. In place of the present accrual, you might have a major retirement of the entire Exchange Building, or some figure of that kind which would pull it down. If you will refer to Respondent's Exhibit No. 128, I can illustrate there very clearly how this depreciation reserve would work on the basis that I have assumed it. The assumption made in that exhibit is that we started with no balance in the reserve in (T. 1927) the year 1923. I have used the actual retirements that the company has made in that length of time, that is, the length of time from 1923 to 1931, and I have shown that over that period, taking account of retirements, insurance, salvage, and the annual accrual, we would reach a balance of $708,479 at the expiration of 1931. Now, those retirements were what might be termed the minimum that might be expected over the next cycle of years, but the reserve would certainly not accumulate any faster than that, even with that amount of retirement; as we go on, however, there may be much [fol. 1566] greater retirements which would materially reduce the reserve.

Comments on Councilor's Testimony in Prior Hearing

I have read the testimony of Mr. Councilor at the former hearing which appears on pages 359 to 404 of the abstract of testimony that includes both direct and and cross examination. As to whether any difference in the principles recommended by Mr. Councilor and by myself for the guidance of the Secretary in the determination of the depreciation reserve allowance, I find that a great many of (T. 1928) the statements made by Mr. Councilor agree exactly with

my thoughts in the matter. There were many cases where I was uncertain as to what was meant. The general drift of the testimony, however, seemed to support my theories. I would say that there were a few places where I partially disagreed with Mr. Councilor's testimony where the matter was not clear. I notice on page 362 of this abstract at the bottom of the page there is a statement regarding renewals, replacements and repairs. That partially agrees with what I have said. I probably went to a little greater length in describing that. I do not specifically disagree with that as a general statement. It is not specific enough however. At the top of the next page was a statement that renewals would be charged against the depreciation account, but there are some exceptions. I do not know just what is meant by that (T. 1929). On page 363 at about the 7th or 8th line, the statement is made: "Depreciation, as carried on the books, is intended to represent the use that has been made of the property to the extent to which it has been deteriorated by that use." Now, I think that statement might have been enlarged upon a great deal. That state- [fol. 1567] ment might be misinterpreted as to what is meant without a specific explanation. On that point my testimony already given makes my position clear. In the middle of page 364, the statement is made: "For example, the sinking fund method is a compound interest method, which distributes lighter charges during the early years of the life of an asset and heavier charges during the later years of its life." Now, I do not follow that at all, because, under the sinking fund method, as proposed in this case, the charges, in so far as they represent an expense to the Stock Yards Company, are equal throughout the various years of life (T. 1930). I tried to follow the paragraph on page 366, down to the last sentence, where it says: "If that is done, there could be none of this amount which could be earning any income to be added to the principal sum." And that is not clear to me what was meant there. On page 370 there is a statement that it seems to me is slightly in error, about the middle of the page, the sentence beginning "What I meant a moment ago when I said it depended on a question of rates was that over the life of the property exactly the same amount would be recovered by the tax payer and allowed as a deduction under one method as would be allowed under another, but, under the sinking fund

method, the heavier charges would come in later years." On page 375, where Mr. Councilor stated he had never examined the books and records of the St. Joseph Stock Yards Company, I call your attention to the fact that I did examine those. As to the statement on the middle of page 378, about the 4th line: "A company that is well managed will allow the amount to remain in its business", I don't believe that is necessarily true. I presume Mr. Councilor was referring there to depreciation reserve moneys when he said "amount" (T. 1931). It is not necessarily true that [fol. 1568] the company would leave depreciation reserve moneys in the business. At the same page, 378, this statement was made, that he did not know what respondent is earning on its other investments. I put in an exhibit showing that in this case. There was a part of the discussion on page 380 regarding reappraisal and the point, I think, was not brought out there that reappraisal might cover property, that, through some accounting, had been charged to operating expenses instead of to capital account. That happened in old companies, particularly (T. 1932). On page 382, the first full paragraph: "The purpose of a depreciation reserve is to reflect the accrued depreciation existing in a property," I assume that that is confined to accounting depreciation and not to valuation methods. That is not clear there. The point in mind is that the purpose of depreciation reserve is not to reflect existing depreciation such as found by Mr. Kosters and Mr. Henrici in their valuations but is merely the accounting depreciation such as I have described. The entire page 383, there is a statement regarding fair return, and so forth, that is not quite as definite as I tried to make it in my testimony. It would be hard to pick out the exact spot where it differs. I think there is a similar variation from some of the theories I expressed. I think some of our discussion this morning related to the matter discussed on page 388, beginning on the third line: "I said I would use the same basis for depreciation purposes as I used for the return." I think I made that clear this morning. I did not agree with this statement I have read of Mr. Councilor (T. 1933). The only way I can interpret the sentence, "I said I would use the same basis for depreciation purposes as I used for the return" is that it means Mr. Councilor is using exactly the same depreciation base as rate base. I do not believe that

is correct. The rate base is cost of reproduction less de-
[fol. 1569] preciation, or some figure having that as its principal element, and the basis for depreciation is either greater than reproduction cost of the investment or some similar item. The same point is covered at the end of the next paragraph on page 388. On page 389, it states: "I have not been down to the St. Joseph Stock Yards." I think that I have described my visits to St. Joseph Stock Yards on a slightly different situation than Mr. Councilor. On page 390, the first paragraph, beginning about line seven (T. 1934) or eight: "The difference between those figures and the depreciation shown on the books would seem to indicate that the depreciation written off heretofore was in excess of the depreciation actually accrued," I could not agree with that, except the definition of depreciation as consisting partly of expired service life. It seems to me that the depreciation accrued might coincide with the expired service life. On page 391, I have a note on the margin of my copy that there are too many "ifs." That was about all I could criticize that one. Page 393, there is a discussion of the extent to which the history would enter into the determination of the rate, and I think I discussed that in showing the extent to which the actual history of the company should influence the proper determination. Page 395, about nine lines from the bottom, the statement is made: "Ordinarily the life of the item which is installed as a repair or replacement is not taken so much into consideration." That largely depends on the size of the item, I think. On page 397, the second paragraph from the end states: "That comes about because the annual charge is arrived at by taking each year the theoretical addition to the principal of the sinking fund, plus the theoretical accruals of interest on all prior accruals, therefore, the amount of the annual charge increases from year to year." [fol. 1570] Now, that statement is nearly misleading because (T. 1935) the accrual on the sinking fund basis is made up of two parts, one part is the straight charge and the other part the interest. The public is the one that is interested in the straight charge, and the interest comes from the earning of the fund, and is not a direct charge against the public. That, very hurriedly, I think, gives the general exceptions that I took to this statement. The underlying principles there are pretty close to what I have

testified to. These specific instances with perhaps a few others, would be some exceptions.

Redirect examination:

I have made an entirely different approach to the study than that made by Mr. Councilor. I was very particular to avoid any study of what Mr. Councilor had done before I started my work, and did not give any consideration to his testimony until I had finished all of my work. I took his testimony to be simply an accountant (T. 1936) brought into the case to study general principles applicable to this situation. I have made some examination of the physical structures of respondent and of its books and accounts. I was attempting by an individual investigation of my own to fix the service lives of the principal parts of this property. As I understand it, none of these things were done by Mr. Councilor, according to the abstract of testimony.

I secured a copy of Government Exhibit No. 121-A in Washington about December 15 and was allowed to keep it until January 4 or 5 (T. 1937). I accepted the figures shown in that exhibit and used them in some of my exhibits. In addition to the time actually spent at St. Joseph, during that time I outlined data to be sent to me by the company from its books and accounts, including a great deal of pre-
[fol. 1571] liminary information and at various times I corresponded with the officers of the company requesting additional information. Some of that was not received until as late as the time of this hearing. I was receiving it nearly every day from about December 15, until the first of January. I consider my own examination of the books, the report sent me by the company, the Government audit, and my examination of the property were adequate for the study I was requested to make and that I had spent sufficient time on this case to make all the preparation that was needed (T. 1938).

I was with the Interstate Commerce Commission from 1914 until 1928. The railroads' property, while it consists of large numbers of items, includes property constructed of similar materials and in many cases very similar in nature to that owned by the St. Joseph Stock Yards Company. The railroads have in their inventories large amounts of property represented by pavements, water lines, sewers, brick and frame buildings, and to a large extent, stockyards.

They also have equipment similar to the equipment owned by the St. Joseph Stock Yards. Railroads do own several of the largest stockyards in the United States, such as the one at Buffalo on the New York Central Railroad, and the ones at Pittsburgh and Detroit (T. 1939). In mentioning the stockyards properties I have examined in one way or another, I inadvertently missed the one at Portland, Oregon. I have been over that property in connection with their railroad which is known as the Portland Peninsula Terminal Company. The stockyards are owned by the same people as the railroad, and at the occasion of my employment by the railroad company, I also went over the stockyards in some detail. In order to make the study I have made and presented in this case I do not believe it is hardly necessary to have handled livestock in a stockyards or to have managed a public stockyards. I made inquiry [fol. 1572] and could find no one that knew that either Mr. Henrici or Mr. Bachmann had ever operated a public stockyards (T. 1940). Referring to my testimony on cross examination where I stated that railroad ties were being retired and replaced by ties of a greater service life, and assuming that the old fashioned tie with the 10-year life was replaced by a tie with a 20-year life, in so far as the new ties were introduced into the property, they would carry a five per cent depreciation allowance each year until they had completely wiped out the old ten per cent tie, so there would be a gradual change in the average rate of depreciation accrual, depending on how rapidly the new ties replaced the old. The ten per cent accrual would be maintained on all ties that were of the ten year life and the five per cent accrual would begin on the ties which were of the 20 year life, so that the average of the whole would vary from ten until it reached the five, as the years went on. There would be no particular accounting difficulty about that. It would just be a composite accounting study (T. 1941).

If I came out here at the end of the 50-year life of the Exchange Building and found it had been retired at the end of 40 years, the straight line method would more nearly fit the facts in that case and provide an adequate reserve for the retirement of that building (T. 1942), for the reason that the annual accruals during the period of 40 years would produce a greater sum in total under the straight line method than they would under the sinking fund method.

The sinking fund method, even if the investment had bought in the interest as required, would never reach the total retirement value of the structure until the full elapsed time had been reached. Giving more weight to obsolescence would tend to decrease the service lives which I have set up in my exhibits and would call for a greater accrual to the [fol. 1573] depreciation reserve. No particular weight was given to obsolescence. If it had been, I would, of course, have used shorter service lives than I did use (T. 1943). Mr. Henrici gave the Exchange Building a life of 40 years, while I gave it 50 years. I have examined Mr. Henrici's testimony to determine whether he gave weight to obsolescence and all other factors commonly comprised within the description "depreciation." Mr. Henrici figured 35 years as the service life for brick garages, while my estimate was 50 years. I do not think the depreciation already accrued on the Exchange Building has been excessive at the present time. I covered that, I believe, in part at least, in my direct testimony, on page 1780, indicating that possibly one-half of the service value of that building has been accrued, and I do not believe that is excessive for a building of that age (T. 1944). In fixing service lives for all the property in the inventory made by Mr. Kosters, I included all property that he included as used and useful, so that, in fixing depreciation, I did not have in mind that any of that property would be other than used and useful during its service life, and, for that reason, the prospective or possible retirement, due to the determination of the Secretary, would have no influence on the determination of service life, as I made it. I am aware that Mr. Christensen recommended that the Transit House be found not used and useful. For that reason I did not make the service life of the Transit House any less than I would have made it otherwise (T. 1945). I gave it a service life of 50 years, the same as the Exchange Building and the garages. It would be a practical impossibility from any economic business standpoint for respondent to further maintain a property originally used and useful, but upon which a fair return is not now allowed. If respondent is required by the nature of its business to [fol. 1574] maintain Packers Avenue but is allowed to earn only one-half the value of the property that would simply be an economic loss. The company would be spending money there for which it received no return. Those are all factors

that ought, in some respects, tend towards a fairly liberal rate of depreciation reserve. They are factors that should at least receive consideration in determining the fairness of a reserve (T. 1946). I have not used them in my determination of service life. The service lives that I have used are based upon the theory that all those properties will continue to have a useful life. I have examined the life tables and testimony of Mr. Henrici, and the testimony and exhibits of Mr. Bachmann and I could find no separations by percentages or amounts for the hazard of obsolescence, the hazard of inadequacy (T. 1947) or the hazard of accident, etc. It has been suggested upon cross examination that the Government's audit shows the experience of respondent in connection with repairs for a period of 6 years. My repair statement included the years 1922 to 1931, inclusive. I do not consider a study of six years a sufficient study to determine the probable amount required during the life of the property for replacements, repairs, renewals and retirements, as that is not representative of what may be expected in a long-lived property. It is entirely too short a period from which to form any definite conclusions. In determining my life tables I gave no weight to the abandonment of factory buildings due to expansion, changes in mechanical arts, etc., nor to the abandonment or disuse of similar properties on account of insolvency. If country buying of livestock or other conditions should ultimately decrease the business of respondent, or force its retirement (T. 1948) from the stockyards business, the depreciation reserve should be sufficient to make good the investment during the useful life of the property. That is one contin- [fol. 1575] gency that might be apparent in the future, and any reserve that is set up must meet such contingencies, if it is in any way possible to anticipate them. At the present time, it might be said that you could not anticipate that particular contingency with any degree of certainty, but, 5 years from now, the situation may be different (T. 1949). I have not taken such a contingency into account in fixing the service lives of property in my exhibits. I have not included that as one of the elements to which I would give weight. However, I did consider a possibility of that kind when I studied the company's depreciation reserve, and I consider that that is one factor which must govern any analysis of the reserve as it stands today. The straight

line method more nearly meets any contingency which brings about an expiration of service life at any period short of the predetermined total service life.

The base would be the same under both straight line and sinking fund methods of accruing a depreciation reserve in that it would be the cost of reproduction new (T. 1950). The service lives of the individual units would be the same. As to whether the annual rate would be the same under both methods, we must draw a distinction by defining what we mean by rate. Under the straight line method, the rate of depreciation is simply that fraction of the total accrual represented by one year's accrual, and under the sinking fund method, the rate is always less than that particular factor, because we have an additional assumption that the amount accrued annually must also start earning interest, so that if under the sinking fund method we had an annual accrual of $750 and under the straight line method we had an annual accrual of $1,000, it might be said that the rate under the straight line method was ten per cent and under the sinking fund method was really 7½ per cent (T. 1951). [fol. 1576] Assuming that respondent should earn a fair return and must in addition earn the annual interest charges on the sum allotted to the sinking fund and that there are no expansions or additions to respondent's plant, the only way the annual accruals under the sinking fund method could be used in respondent's business and could succeed in earning a fair return plus 5 per cent as an interest charge on the annual accrual would be for working capital. In that case the fair return would have to be greater than the fair return if there was no such assumption of use. Working capital is a separate item in appraisals of property, provided for in and of itself. If it had been provided for as a part of the investment there would be no necessity for using the sinking fund in that connection. As a practical matter there would be no use for the sinking fund at all (T. 1952). If the sinking fund were used instead of the working capital, it would mean that the working capital would not be working which would be an economic loss. If the annual accrual were used in the business and that succeeded in receiving no more than the fair rate of return on the property the result would be that your fair return would have to be increased, because you would have an additional expense item that would cover this earning of interest that would be required

under the sinking fund method. If the rates cannot be increased it would be an additional loss to the stockholders. That is, the amount necessary to set aside as the interest earnings on the sinking fund accrual would in effect have to be subtracted from the fair return. The money so used would be subject to all the hazards of the business (T. 1953). Assuming that respondent used the money for a needed extra block of hog pens, the money so used would be subject to all the hazards of the business as to earning power. If the additional block of hog pens did not earn 5 per cent again the stockholders would suffer because there would [fol. 1577] be an additional expense item that would have to be added to the fund to keep up the normal accrual of this compound interest. Putting it another way, the accrual of the compound interest would, in effect, have to be subtracted from the fair return, [illegible] there happened to be a further deficit in the fair return, the stockholders might have to go into their pockets to fully comply with the requirements of the sinking fund (T. 1954). In respect to my cross examination about the analogy between the sinking fund method and the practice of insurance companies in accruing the amount they will pay to policy holders, I do not know of any insurance company that will issue a policy based upon the proposition that it will accept money from a policy holder and give him back at the end of a stated time an amount equivalent to his annual contributions, compounded semi-annually at 5 per cent. The most liberal policy with which I am familiar would be much less than that. The endowment policy usually pays the sum paid in plus about three per cent of straight interest. To be an exact analogy it would be necessary for the insurance company to guarantee to the policy holder his annual contributions plus compound interest at the rate of 5 per cent compounded semi-annually (T. 1955). I have never heard of any such policy. Insurance companies in the last five years have invested large sums in farm mortgages and railroad bonds. In some States those investments have been safeguarded by laws requiring the investment in what were supposed to be very sound and conservative securities. The result of such investments has been that the insurance companies have now in their portfolios, as they are termed, large blocks of railroad bonds which are no longer considered proper investments, for the reason that the interest has been de-

faulted. They also have large investments in farm mort-
[fol. 1578] gages and city building mortgages, upon which a percentage at least has been defaulted as to interest. It is common knowledge that as to the latter two classes of investments, they are now frequently unable to obtain either principal or interest (T. 1956). They were considered legal investments for the insurance companies in the States which have those provisions in their laws, governing such investments. I could hardly expect that respondent could do as well as an insurance company of a high grade in making its investments over a long-term period. In so far as I know, the insurance companies represent probably the largest investors in income-producing securities of any group of investment concerns in the country. They ordinarily have as a part of their executive force men who are supposed to be skilled in finance and investment matters. The investment feature of insurance companies is one of the important factors that are of interest to the policy holder. It is the result of the investment of his premiums which makes it possible for the insurance company to pay out at the expiration of the policy, or at the death of the policy holder (T. 1957). The alternative to investing the sinking fund in respondent's own business would be on the outside in some form of safe and sure returns. It would depend on the particular conditions at the time the investment was sought, whether it was thought best to invest it in one type of security or another, or even in mortgages. It would, of necessity, require them to become investment bankers as well as a stockyards company, so that they would be carrying on two businesses, where before they were simply carrying on one. I have heard of no investment banker or person doing an investment business who will accept my money and give his own guarantee of a 5 per cent return for each year out of 25 years without any loss and without diminution during that period in the selling price of the security bought. He
[fol. 1579] would probably not be considered a good business man and would probably go out of business (T. 1958). It is a necessary assumption that the expected interest be obtained each six months and that the market price of the securities shall remain equal to that which is purchased because if the fund is to be drawn upon for retirements at any time, we must expect to withdraw an amount of the

original investment. Otherwise, we are crippling the fund by the amount of the discount you have to suffer when you cash these securities. Even granting that the bonds should not be defaulted as to the principal, it is not merely sufficient to maintain the interest rate. Assuming respondent under the sinking fund method had bought a bond at 100 a year ago which had paid 5 per cent interest and at the present time it needed to withdraw that bond to replace something on its property but the bond, though still paying 5 per cent interest is selling at 90, the sinking fund is immediately crippled to that extent. There are 10 points off on the selling price of the bond that must in the future be made up under some other scheme. The rate of accrual could be increased which would, in the long run, perhaps, bring the annual accrual up to the straight line accrual that might have been used in the first place (T. 1959). To the extent that a security may be, at the time it is to be used, below the price at which it was purchased, the theory of the sinking fund will fail to bring about the expected result. There would be no such obstacle in connection with the use of the straight line method. In Respondent's Exhibit No. 131 I gave the average return over a period of years of certain investments made by respondent. Those are what might be termed "gross returns" with no deduction for taxes of any nature. I stated the amount approximately by which that income would be reduced due to such taxes. It would be contrary to reason and law to assume that in setting up a sinking fund you would not be required to pay taxes estab- [fol. 1580] lished by law (T. 1960). If this sinking fund is to be established for the future that phase of it would not be sufficiently taken care of if the Secretary merely allowed the taxes that had been paid by respondent in the past because that bases the entire allowance on past experience and takes no account of this additional tax burden which is going to be present in the future. There is no such experience in the past. Assuming the sinking fund were adopted, the return would have to be large enough to cover the contingent expenses such as taxes. In addition to the interest earned, there must be provision for expenses in connection with that interest. Referring to my cross examination respecting Respondent's Exhibit No. 122, I want to emphasize the fact that the depreciation accrued to date of retirements, as shown in column 5 of this exhibit is the total ac-

crued depreciation of record, on the Company's books, up to the date of retirement, and is not limited by the first date shown on the exhibit, that is, 1922. Some of this accrual goes back to the beginning of the Company's depreciation accounting which was in 1916 (T. 1961).

Referring to my cross examination on the necessity for using the straight line depreciation with the depreciated rate base as compared with using the sinking fund with an undepreciated rate base, the distinction that I was making was between the rate base and the depreciation basis. On both methods, the same basis, that is, cost of reproduction new, is applicable as a depreciation base, but if we base rates on a depreciated rate base, we cannot use the sinking fund method as a method of accruing depreciation (T. 1962). That is because the investment would not be kept unimpaired under that method. The investment is impairing as soon as we consider cost of reproduction less depreciation, and we must accrue then, under a method which will pro- [fol. 1581] vide the full cost of reproduction new. The theory of fixing rates upon a depreciated rate base is based upon the assumption that the present user of the property should not pay on the value that has passed out of the property prior to his use of it. If that theory is followed out and the sinking fund method is used, it results in the owner really having his property confiscated because he does not receive the full compensation for the impairment. I quoted one or two authorities in my direct examination on that point (T. 1963).

My recommendation for a depreciation accrual of one hundred thousand dollars per year on respondent's property is based, in so far as it is possible to do so, upon a study of respondent's records, its past history of retirements and replacements, coupled with my own best judgment as to the service lives of the property which have not yet been retired or replaced. Assuming that a utility may in the past have had what we may term excessive earnings, or earnings above the minimum that might be prescribed by law prior to the fixing of rates by authority, those excess earnings in the past may not be balanced off by making less than a fair return in the future (T. 1964). The amount the company has earned has become its property. My answer would be the same as to a depreciation accrual in the past years. Assuming the Secretary was to

fix rates for the future, in my opinion, the depreciation reserve should be fixed entirely in regard to the future needs of the company and what has been done in the past is a matter of water over the dam and cannot be compensated for in any adjustment of future rates (T. 1965). As a result of my study of the factors entering into a depreciation determination, I am of the opinion that the past accrual in no way should influence the fair accrual for the future. The only consideration given to the past accrual would be in the study of its efficiency of service lives for the future, and, in so far as that enters into it, there would [fol. 1582] be a determination of (T. 1967) the future, depending entirely on what was found to be the prospective service life. There would be no offset due to what had been done in the past. My opinion is that the average actual normal currently accruing depreciation in respondent's property over its service life is at least $100,000 per year. Any less amount will not be sufficient to enable respondent to make good its depreciation and replace the parts of its property when they come to the end of their life, nor keep the value of its property investment unimpaired so that at the end of any given year the property investment will be equal to the original investment or value. Based upon my studies of this property and the records of respondent, $50,000 a year would in my opinion be insufficient on any basis to keep the property investment of respondent unimpaired so that at the end of any year the investment in or the value of the property at the time of rate making would continue unimpaired (T. 1968).

Recross-examination:

Referring to the testimony on page 1921 of the transcript in which is set out questions and answers concerning the amount of appreciation in the property of respondent as shown by the appraisal of Mr. Kosters made in the year 1929 and in the year 1932, I have now read Mr. Kosters' testimony (T. 1969-70). The testimony itself does not indicate in terms of money the extent of the appreciation, but indicates a difference in condition per cent. I did not examine Mr. Kosters' appraisal for the respective years. As to how the appreciation could have come about in respondent's property in the period of 1932 as compared with 1929, I can only state Mr. Kosters' reason for the

apparent difference, as stated on page 1539 of the record [fol. 1583] where he states: "Oh, I am not attempting to justify anything Mr. Burnell said. I am very frank to acknowledge that the approach which I had in 1929 was entirely different than the approach which I had in 1932. I justify that by the simple statement that I have lived three years and I think learned considerable in that interim." I think that explains very briefly the reason for a possible difference in condition per cent (T. 1971). I would hardly put the interpretation on his testimony that his experience since 1929 has taught him how to find a higher condition per cent. I think the method of approach has a great deal to do with the determination of the condition per cent. I pointed out, I believe, that Mr. Henrici stated a variation of as high as 25 per cent between the determination of the different engineers. Now, it is very possible that each of those engineers had a different method of approach and would obtain a different result. Mr. Kosters testified that he had a different method of approach in the later year than he did in the earlier year. That might very easily account for the entire difference. I don't know that I could state that there is nothing about the situation which indicates that the property has actually appreciated in its condition, because property appreciates, when extensive replacements are made, provided the amount of the new property installed is in excess of the depreciation of the old property. It is merely a question of fact that will develop after an examination of replacements and renewals (T. 1972). When replacements are made, the condition per cent would rise immediately, when a new property enters into the composite structure. As to whether any additions, betterments, or replacements have been made in respondent's property since 1929 which would account for the $200,000 appreciation in its condition, I cannot think of that in terms of money for the reason that that gives no consideration to price-changing. An appreciation of $200,000 would be perfectly possible [fol. 1584] with the same condition per cent in two different years. That might be accounted for by price changes. Costs of material and labor at the present time are lower than in 1929. We do not know, however, that all material and labor and all equipment have gone down. We are speaking of averages. There is always the possibility of an adverse change in the price of any material. I am just

stating this merely to show the uncertainty of determining by dollars and cents what appreciation is (T. 1973). In general it is undoubtedly true that as between the date of the 1929 appraisal and the date of the 1932 appraisal, the very materials appraised have gone down and the very labor appraised has gone down. As to your statement that that could not possibly account for the appreciation in condition, I don't like to tie it right down to possibilities because there might be one single item in property there that did not follow the general trends that you are referring to. If there be one single item of property or one material which went up, it is just a possibility that that would change the factor when the appraisal showed that, taken as a whole, the material items and labor items were lower. I said I did not want to tie myself down to an actual fact there because there is that adverse possibility that it might have in it. Speaking of the $200,000, it would be ridiculous to assume that if the appraisal showed that the total cost of materials in the stock-yard properties are less in 1932 than they were in 1929, the fact that one single material cost more could account for that appreciation, but there might be a change along the lines indicated. It is possible. In other words, it is not impossible (T. 1974). I had nothing to do with the making of Mr. Kosters' appraisal and I have not investigated it in any way to determine whether it is right or wrong. I would not attempt to pass on it at all without an investigation.

[fol. 1585] I know that a number of years ago the Buffalo, Pittsburgh and Detroit stockyards were owned by the railroad companies (T. 1975). Those operating companies were occasionally considered as distinct from the railroad operations, but in so far as ownership is concerned, it was railroad property. So far as I know, it is still railroad property. I haven't investigated recently. There may have been separate operating companies. The property, however, was still considered as being railroad owned. By "separate operating company" I mean just the same as any outside interest of the railroad. At one time, the railroads owned coal mines and they operated those with independent organizations, but the railroads owned them, and they were required to get rid of those. The railroads have owned various steamship companies, which have been operated as a separate corporate entity, but they were still

under stock ownership by the railroads (T. 1976). The operating companies of the Pittsburgh, Buffalo and Detroit stockyards may have been subsidiaries of the railroads that owned the stockyards. It has been some time since I knew anything about it at all. It is just a recollection that I have. They may have changed in recent years for all I know. At the time I had some experience with these railroads which owned the stockyards, I did not have anything to do with the inventory of the stockyards. At the time I was with the Interstate Commerce Commission I was in a civic district. As to whether the fact that certain railroads owned the stockyards at Buffalo, Pittsburgh and Detroit has had any connection with my experience, it seems to me that the pricing of property of a nature such as enters into stockyard construction qualifies me to some extent to pass on that property if it happened to be in the stockyard (T. 1977). The railroads used property similar to that inventoried for the St. Joseph Stock Yards and I had some 14 [fol. 1586] years' experience with railroads all over the United States, valuing them and determining depreciation and reproduction costs, and included in this railroad property was certain stockyard property. I was, therefore, familiar with the stockyard materials and property in so far as they were owned by railroads (T. 1978). I did not inventory the property used in the Buffalo, Pittsburgh, or Detroit stockyards, and I never studied the operation of any one of those stockyards, and I never made any study to determine the need for depreciation reserve for any one of those stockyards. I did not inventory the stockyards at Portland, which is a small yard. I examined its condition, that was the principal object and it was exactly in the same class as the stockyards at Fort Worth, Sioux City, and St. Paul, that I examined at the time I handled their railroad cases before the Interstate Commerce Commission. This was a little different form of case at Portland because it was preparation of a report to the Interstate Commerce Commission that entailed the examination of the land situation and the general layout of the tracks with respect to the yards (T. 1979).

I think that I was using the wrong figures when I said that approximately one-half of the service life of the Exchange Building had been accrued in the depreciation reserve. The accrual of depreciation now of record on the

company's books dates from 1916. That has been a period of 16 years. With reference to my statement that it was impossible for respondent to maintain and use a property on which a fair return is not allowed, I think the statement with respect to Packers Avenue illustrates that point, the company being required to maintain that street must of necessity be under an expense. Now, if that property is not included in the rate base, there is no possible way that the [fol. 1587] company can meet that expense except to go down in its pocket. There is no earning that would come to it through that Packers Avenue. That refers to the one-half of Packers Avenue about which I was testifying. As an economic proposition, if the patrons of respondent are not made to pay a return on both halves of Packers Avenue, it would be impossible (T. 1980) for respondent to continue to maintain and use more than one-half of Packers Avenue, unless it would be just charity and they dig down in their pockets and pay this money for the maintenance of the other half. I presume it would be charity to the users of the stockyards who would get the benefit of it. I don't know that the packers who front on one-half of this avenue could be made to pay for their use of it. Packers Avenue is considered as an adjunct to the stockyards. It is their property, as I understand it. I presume that they can close it when they see fit, but that probably would be a question of law as to how long it had been operating as such. The Transit House is another example, of course, of that same proposition. If the Secretary of Agriculture should say in his order that he was not going to (T. 1981) compel people who patronize the stockyards to pay for that privilege enough, in addition to the cost of that service, to maintain the Transit House, and as to whether that would prevent respondent from using the property as a hotel and getting what return on it it is capable of making as a hotel, the point is that the record is clear that it is not a paying proposition by itself. It has to be considered as a part of the property of the stockyard as a whole in order to warrant its existence. I know of no reason why the rate of return on the Transit House by itself should change due to an order of the Secretary (T. 1982). As far as I know, that would have no influence on the actual business [fol. 1588] of the Transit House. It seriously affects the operation of the Stock Yards Company, however, from a

revenue standpoint. I think that the exclusion of the hotel from the rate base deprives the Stock Yards Company from such benefit as it would get from having a higher rate base and the net return allowed on a 7½ per cent basis would therefore be smaller and the stockyard would lose the benefit of that additional rate base. The patron's viewpoint is that if the hotel is included in the rate base, the patrons of the stockyard have to pay a fair return on the value of the hotel property. If it is not included in the rate base, they do not have to (T. 1983). I think the viewpoint of the stockyards is more important in that case. The difference between the viewpoint of the stockyard and the patron is simply that their property used and useful as they consider it includes the Transit House and any rate of return should be predicated on the inclusion of all used and useful property. The fair rates are based on the return on used and useful property, and just as soon as you reduce the amount of that used and useful property, you, of course, can lower the rates, if you want to. Now, that could be carried to extreme limits, if necessary. If the Transit House is put into the rate base, the patrons of the stockyard will have to pay a fair return on it, with the other property (T. 1984).

I have tried to explain the study which I made and the factors considered in connection with making up my estimates of the service lives of the various units of property. My estimate was based on an analysis of factors and not a guess. With reference to my statements on direct-examination and cross-examination relative to the weight which I gave to the factors of accident and obsolescence in determining my service lives, the facts as I see them are that consideration and weight may mean two different things. We [fol. 1589] have to consider all of these factors in determining service life, but to assign a certain percentage of weight to any one (T. 1985) of them is entirely another thing. We know from the record of this company that there has been accident due to fire. We therefore give that some consideration, although in a building such as the Exchange Building, I believe which was the subject of considerable cross-examination, the actual weight assigned to the fire probability would be practically negligible. In other words, I would fix my 50-year life, regardless of whether I thought there might be a fire there in the next 10 or 15 years or not.

You may give a certain factor consideration and it may have some effect on the conclusion. The factor of accident very slightly affected my conclusion as to the service life of units of this property (T. 1986). The only consideration that we would give to accident would be the fact that during its existence this company has had what might be termed "a normal number of fires." Therefore, I determined what might be termed "normal service lives", which would include the possibility of a normal number of fires. I gave it weight only as a normal consideration. As to the matter of flood accident, that is practically negligible. It is a fact that sometime in the future this river might overflow. It would be such a minor consideration that we could say that we could neglect it because other considerations would be so overwhelmingly predominant. As to whether a fire accident is in and flood accident is not in, I don't want you to consider that that is any influencing factor at all, except as it enters a normal determination of life. If there had been, we will say, four times as many fires, then, we would say it is in, and we are giving it weight, but, if there had been no fires, perhaps we could say that it is not, because we might extend the service life a little longer (T. [fol. 1590] 1987). A fire accident would be given the same consideration that I would give to the fact that we probably will expect normal weather conditions throughout the life of this structure and give a normal service life on the basis of normal weather, and the same would be true of tornado accident. I gave no consideration to the obsolescence that may come about by the exercise of a regulatory power in fixing the actual service life adopted. I simply say that is a factor that would influence the present reserve. I did not say that the Secretary, in weighing this matter of service life, should give no consideration to that factor. I said that, in my opinion, I fixed a service life based on the present conditions of used and useful property (T. 1988). If the Secretary does something else, then he can change his mind and fix service lives on the basis of what he does. If any of the property should be excluded from the rate base, that becomes a factor that should be considered in the service life of the property (T. 1989). In determining the service lives for the various units of the property of respondent, I gave some weight to the retirements of other industrial properties which have been retired in

the past which might be termed normal retirements (T. 1990) due to wear and tear of the property in ordinary operation. I had knowledge of a great many brick buildings or similar structures which had gone on with a normal existence, we will say, for many years longer than 50 years, that type of property being entirely different as to operation, but still constructed of the same material. I considered that as what might be termed a normal retirement and it assisted me in forming an opinion as to entirely different structures on this company's property. That was just one of the general subjects I gave consideration. I have in mind a great many railroad structures. I believe there was a depot building in St. Louis which has been there [fol. 1591] for an unusual number of years, operating as a depot. There are depot buildings in other cities, Harrisburg, Pennsylvania, has one. There have been many office buildings in cities that I have been familiar with that have extended their normal service lives and have not been retired on account of any unusual condition. I did not use the so-called life tables in making my determination of the service lives of respondent's property. The tables I think I explained at that time are either general tables such as the Bureau of Internal Revenue publish, or tables in various text books. The use of those is dangerous unless you know the conditions under which they were prepared and the purpose for which they are intended. I gave such tables consideration. It is a part of the knowledge you base your conclusion on. Page 338 of Government Exhibit No. 121-A shows repairs from 1922 to 1932, and, as I recall, there were certain other schedules (T. 1992) however, that contained the six year period that I had in mind. This particular one shows repairs divided in a certain manner that was not used, however, by me, as they stand. Pages 384 to 387 are entitled "Land, building and improvements, May 31, 1916, to December 31, 1922, statement No. 21," and the accounting apparently (T. 1993) indicates the additions and retirements of property during that period. Pages 25 to 51; inclusive, are entitled "Stockyards, buildings and improvements as at August 31, 1932," and that statement gives the balance in the investment and the additions and retirements from December 31, 1922, until August 31, 1932 (T. 1994).

I do not know of any reasonably safe place where money today can be invested and earn 7½ per cent. As a straight

out-and-out investment, such a rate of return would be very unusual. The use of the depreciation reserve fund by the respondent in its business, of course, is governed by the [fol. 1592] requirements of the business, but the use, if it is in the straight line reserve, may be one thing, and if it is the sinking-fund reserve, may be another. Assuming it is a straight line reserve, any use that respondent makes of any moneys which it has during the operation of the property and distinct from additions may be considered as a use under the head of working capital. That is, its (T. 1995) revenues come in at a time to supply the necessary requirements for expenses, or they do not. Now, if they do not, it is necessary to draw on the working capital at certain times to carry on the operation of the company, and if a portion of that working capital, which we may assume to be cash, is represented by a depreciation reserve on the other side of the balance sheet, that may be used in the operation of the company. It would not be bad management for the respondent to take some of the straight line depreciation reserve and use it to make additions to the property if it is the concensus of the management that that was the best place to put it. It just depends on what the management thinks of it, what they feel they should do with it. It is their property to do with as they choose (T. 1996). With reference to the difficulty which insurance companies are in now because they have invested their money in farm mortgages, if they foreclose for the purpose of collecting their money and investing it elsewhere, I do not know who they would collect it from. If I read the newspapers correctly, there is no sale for mortgaged property at the present time. Real estate is practically unsalable. When I spoke of the respondent becoming an investment company in connection with investing the sinking fund depreciation reserve, I meant that respondent is not now making investments as a requirement. There is a very definite requirement put upon the Stock Yards Company under the sink-[fol. 1593] ing fund method, that it shall invest these funds, so that they will bring in a specified rate of interest, and that means that they have to act and have to invest and have to watch the investment and attend to the other matters of the compounding of the interest and other features of the operation of the fund. Some individual may be so fortunate as to accumulate enough money so he feels he

should invest it, and he goes out and invests it, and, if that same individual, however, changes his occupation and becomes an investment banker, he has a different outlook entirely. It is the same way with this Stock Yards Company (T. 1997). If they are required to make an investment, they really become an investment trust, whereas, if they are just a stockyards company, they are simply looking after the interest of any surplus fund that they may have at a particular time. The respondent actually has money invested at the present time. The managers of respondent's business have to look after those investments. It is just the difference, though, that I have just pointed out, that that is simply an outgrowth of their business and is not their principal occupation. I do not know as it is their duty to go out and seek the very best possible investments at all. As good business men, they probably do endeavor to place their money where it will bring in a return, but they are not required to do it (T. 1998). That is not their main object in life. They are running a stockyards.

I have never had any experience in the operation of a sinking fund of any kind. With reference to whether a company, after the fixation of rates, uses its depreciation reserve accrued or accumulated before the fixation of rates, I simply said that as a result of my study I was convinced that the spreading of past accumulations into the future to influence the lowering of rates for the future was improper. I have quoted in this testimony a number of decisions that [fol. 1594] I have read and I have read a good many others (T. 1999). Of course, I must be influenced by what I read, regardless of whether it is in an accounting treatise or an economic treatise or a law decision. I have read the thought expressed by accountants, economists, and jurists that a rate-regulatory body may not allow a utility a deficient depreciation reserve and justify that on the ground that in the past the company has been setting up too great a depreciation reserve. If you tie it down to a rule, I presume as a matter of accounting there is nothing in accountancy to prevent a company from making a reexamination of the depreciation reserve and deciding that it has been setting up too much in the past which has been accumulating faster than there was any need for and that for a period in the future they will not set up as much as would be required. That would be correct all the way along until they equalize

that and then begin setting up the equal amount. Ordinary judgment would prevent such an approach of any accounting principles that I know of (T. 1999a). Assuming a company had been setting up $10,000 a year in straight line depreciation for ten years so that they had accumulated $100,000, and at some period after the ten years had an accountant examine their depreciation reserve, and he reached the conclusion that $5,000 per year over the past ten years would have been sufficient to set up, it would have resulted in $50,000, and there is really a surplus in the depreciation reserve of $50,000. If depreciation was actually accruing at the rate of $5,000 I would set up $5,000 a year from then on. I would not try to equalize by setting up less than $5,000 (T. 2000). I would not try to equalize because I would not consider that to be good accounting. I do not know that the surplus amount in the depreciation reserve was excessive for the time it was set [fol. 1595] up. It may be that five years from now I would go back to $10,000 a year. I would not adjust that at all. It is my opinion that an accountant can never say that a company has set up an excessive amount for depreciation reserve unless he was there at the time it was originally set up and knew it was excessive at that time. He cannot at this time say whether it was or not. An accountant coming into business some years after the depreciation reserve is first set up knows what the past experience shows and that is all (T. 2001).

Redirect examination:

As to the appreciation under Mr. Kosters' appraisal, the fact that his condition per cent was a compromise between him and the Government engineer is a factor that I would have no means of knowing without being advised. That might affect the result. Depreciating overheads in the former appraisal and not depreciating them in the present appraisal shows a different method that would account for some of the difference. I think it is a very fair interpretation of Mr. Kosters' testimony to say that with his present experience and training he would have reached a higher per cent condition in 1929 than he did (T. 2002).

Assuming respondent proves that its rates are not sufficient to afford it a fair return on the value of its property, the patrons are not being in any way burdened by having

the Transit House in the rate base. If I had used mortality tables for certain structures such as brick buildings I would have reduced the service lives below the life I fixed for them. That is illustrated particularly by the Bureau of Internal Revenue's service lives. I do not personally know whether the figures in Government Exhibit No. 121-A correctly reflect either the records of the company or the [fol. 1596] facts of the company's physical property. You could not use the sinking fund accretion for an addition to the property without restrictions, which would be that there must be an earning sufficient to meet the requirements of the sinking fund. It would be subject to good times or bad times, to the particular business for which the addition was made (T. 2003).

My investigation shows that respondent is earning less than 5 per cent on the money it puts out at interest. From that gross return taxes would have to be deducted. The present investment would not warrant the use of the sinking fund, in a similar manner of earning efficiency, so that 5 per cent per annum could be obtained to be compounded semi-annually.

I have had no experience in the operation of a sinking fund depreciation reserve for a property such as respondent's, or for any other property (T. 2004). I have never known of any such operation of a sinking fund being carried on.

Recross-examination:

As to whether the depreciation or lack of depreciation of general overheads has an effect on present conditions found for the physical property, it depends on what you are calling the physical property as a whole. In certain estimates with which I am familiar, the overheads are included in the total estimate and the resulting condition per cent is the ratio of the two figures in the total estimate. As to whether there would be any difference in the condition per cent found for the physical tangible property, if general overheads were depreciated or left undepreciated, it all hinges on what you call the physical property. I know in the Interstate Commerce Commission's determinations of cost of [fol. 1597] reproduction new and cost of reproduction less depreciation, a portion of the general overheads are depreciated, and one item, engineering, is not depreciated, but

the general term of the condition per cent property as a whole includes all of those overheads as well as what you term physical property (T. 2005). The practice of the Interstate Commerce Commission, and that is the most general practice with which I am familiar, differs because one of the overheads there is not depreciated. The failure to depreciate that overhead changes the figure that is found for the physical property for the report as a whole, because the same figures are in both cost of reproduction new and cost of reproduction new less depreciation for that single overhead. Assuming a building where the condition per cent is 80, and you depreciate the overheads to 80 per cent, the condition per cent of your physical property is still 80. If you do not depreciate the general overheads at all, the condition per cent of the physical property is still 80 per cent (T. 2006), if you are speaking of your first proposition, general property, but if you are adding some money in there that is not depreciated, you are changing the ratio.

Land Values

Mr. William E. Spratt, a witness, called by respondent, having first been duly sworn, testified in substance as follows:

Direct examination:

I live in St. Joseph and am a realtor and am the same person who testified in the previous proceeding (T. 2007). Since that hearing, I have continued in the general real estate business as conducted at the time of the prior hearing. I assisted, through the Real Estate Appraisal Board in appraising the land of the St. Joseph Water Company, [fol. 1598] the St. Joseph Light, Heat and Power Company, and individually I appraised the land of the St. Joseph Gas Company. I reappraised the land of the St. Joseph Stock Yards Company for its hearing at Minneapolis, and a number of other private appraisals through our office. In 1930 I testified in the proceedings involving the recapture of excess earnings of the St. Joseph Belt Railway Company. In 1932 I was President of the St. Joseph Real Estate Board and am today a director.

In 1929 I appraised all the land owned by respondent and testified in the former hearing (T. 2008), as to my opinion of values. I have been asked to bring that appraisal down to date. I have done so. I took enough time in my reappraisal to sufficiently apprise myself of the conditions and to associate in my mind the conditions as they are. I was at it off and on for several weeks. I followed the same general methods used by me in my 1929 appraisal. Respondent's Exhibit No. 132 is my appraisal report (T. 2009). It was prepared by me personally. Page 21 of that exhibit represents my opinion of the values of respondent's lands, the zones being the same zones I used in the prior hearing with the exception of some variation of area. Mr. Black gave me the area of each zone and I understand that it was the result of an agreement with Mr. Henrici as to the area. On page 22 appears a map on which I have outlined each of the zones listed on page 21, stating the area in acres and square feet as well as the unit prices (T. 2010). The red lines on page 22 indicate the zones that the Stock Yards Company believes are used and useful. The yellow lines are outside of that scope of use. Mr. Black, representing the Stock Yards Company, gave me that designation. Respondent's Exhibit No. 132, plus my previous testimony in these proceedings, set forth the [fols. 1599–1601] method used by me in arriving at the value of respondent's lands.

RESPONDENT'S EXHIBIT No. 132

Below are pages 21 and 22 of Respondent's Exhibit No. 132, being the summary of valuation and the land map covered by the appraisal of William E. Spratt.

Summary of Valuation of Land Owned by St. Joseph Stock Yards Company, by Zones, as of August 1, 1932

Zone	Acres	Square Feet	Sq. Ft. Rate	Acre Rate	Zone Value
A	72.249	3,147,163	.26	$11,325.58	$818,262.38
B	17.293	753,286	.13	5,662.80	97,927.18
C	24.655	1,073,972	.11	4,791.60	118,136.92
G	11.436	498,152	.15	6,534.00	74,722.80
E	10.283	447,927	.11	4,791.60	49,271.97
F	45.951	2,001,626	.05	2,178.00	100,081.30
F-1	.874	38,071	.02	871.20	761.42
G	22.752	991,077	.01492	650.00	14,788.80
H	10.313	449,234	.01721	750.00	7,734.75
I	9.400	409,464	.01722	750.00	7,050.00
J	24.873	1,083,468	.01722	750.00	18,654.75
K	16.083	700,577	.011478	500.00	8,041.50
L	18.316	797,843	.006887	300.00	5,494.80
M	12.516	545.197	.0046	200.00	2,503.20
N	56.412	2,457,322	.0688	3,000.00	169,236.00
1	.544	23,697	.35	15,246.20	8,293.95
2	3.190	138,956	.12	5,227.20	16,674.72
3	14.362	625,609	.06	2,613.60	37,536.54
Total	371.502	16,182,641			$1,555,172.98

[fol. 1602] On page 13 of Respondent's Exhibit No. 132, I refer to certain transfers, which are the same as those incorporated in Mr. Zelinski's report which is Government Exhibit No. 128. He listed 147 transfers and I think we had two or three outside of those, but those were the ones that we investigated together (T. 2011). I myself would have placed these transfers in the record but for the fact that they were put in by Mr. Zelinski. I had before me and considered each of the 147 transfers listed by Mr. Zelinski in his report, which is Government Exhibit No. 128. Mr. Zelinski, Mr. Quinn and I went together to ascertain the facts in the investigation of practically all of these transfers (T. 2012). I went with Mr. Beauchamp, a representative of the Interstate Commerce Commission, and investigated each of the first 53 transfers. Some of them Mr. Zelinski further investigated.

In the appraisal of real estate, I find various types of land, such as residential, retail, wholesale, industrial and farm land. I would classify respondent's land as industrial property. It takes on a measure of both retail and wholesale property on account of the amount of trading in commerce that goes on down there in the sale of cattle, hogs and sheep and all kinds of livestock (T. 2013). Land values always follow where people congregate, particularly in a business way. The most valuable property in town would usually be the particular corners where most people go in.

certain parts of the day. Trade is a peculiar thing. It is not always in the crowd. It is the crowd that has the trading tendency or the trading mood, and they have certain moods, that gather on certain hours and certain days, and those places are the center portion. The fact that people have tendencies to go to certain places to do their trading has an effect upon land values in that immediate section. I found in Zone A that a great many people sell a great [fol. 1603] many dollars worth of livestock each day, and that they are there either in person or by representative, and it makes a concentration (T. 2014). I found there both buyers and sellers. I would think there would be as many people gather in Zone A to transact business as anywhere in South St. Joseph and the adjoining unit during the course of a week. Without doubt, the center of values would be Packers Avenue and Illinois Avenue. I think that location is more valuable than the property east of the railroad tracks. If the same development were permitted around Packers and Illinois Avenues, its land value would far exceed the land on Illinois Avenue east of the railroad tracks. In making my appraisal, I have had that in mind (T. 2015), as well as the various other features outlined in detail at the time of the 1929 hearing and as supplemented by my appraisal report which is Respondent's Exhibit No. 132.

My valuation is as of August 1, 1932. It represents the value of land of respondent through the year 1932. It is the value at the present time. I knew that respondent had another land appraiser. Mr. Quinn and I did not cooperate in making our respective appraisals only in so far as we were ascertaining the facts pertaining to the transfers and that was also in the company with Mr. Zelinski. I was not in any manner influenced by Mr. Quinn's opinions as to the value of the land I appraised (T. 2016). I did not discuss the value of this land with Mr. Quinn.

I have read the findings, conclusion and order entered by the Secretary of Agriculture in this proceeding on July 20, 1931. I am familiar with paragraph 73 thereof. I was one of the appraisers referred to in that paragraph, the others being Frank M. Atkinson and Walter L. Mack, neither of whom is now alive (T. 2017). Referring to the following sentence in said paragraph: "It is very clear [fol. 1604] from the report of the record that all of these

appraisers included in their valuation the going concern element inhering in the land because of its integration in, and use as a part of a going operating concern, namely, the stockyards," that is not a true statement as far as I am concerned. In my 1929 appraisals I did not include anything but the bare land value. I did not include in my land value going concern value. In my appraisal as of August 1, 1932, I did not include the going concern value in my land value. Referring to the following sentence in said paragraph 73: "It is equally clear that in the mind of each of the appraisers, this going concern element was valued at 15 cents per square foot," that is not a correct statement as far as I am concerned (T. 2018).

Land Values Over Period 1927 to 1932

I have been asked to value the land now owned by respondent by applying average values prevailing over the period 1927 to 1932, inclusive. I was familiar with the value of respondent's property during that period. I have appraised the stockyards property before on previous dates, appraised the Belt Railway Company property, and appraised the Union Terminal Railway property in that vicinity at different times. I made one specific appraisal in 1929. I was asked to make an affidavit which was filed in the injunction proceedings following the issuing of the order of the Secretary dated July 20, 1931, and testified in the recapture case of the St. Joseph Belt Railway Company as to the value of that property for the years 1920 to 1928, inclusive (T. 2019). As a result of these various appraisals, and as a result of additional investigation that I have made just prior to my present appraisal, I feel that I knew the value of respondent's property throughout the period 1927 to 1932, inclusive. I have prepared a state-[fol. 1605] ment showing my opinion of that value which is Respondent's Exhibit No. 133. In preparing that exhibit, I used the same methods used in my 1929 and 1932 appraisals. The zones in the areas are the same as shown on page 21 of Respondent's Exhibit No. 132 (T. 2020). As shown on the exhibit, the unit prices for the years 1927, 1928, 1929 and 1930 are the same as in my 1929 appraisal. The figures for the year 1932 are the same as in my 1932 appraisal. Up until 1930, the prices of land had

been on more of an even keel. The reduction in the value of land did not begin until later, after the 1929 catastrophe in the east, so far as stock markets were concerned, and I made my first reduction in the valuation as we felt it here in this section, in 1931. As far as my opinion of value is concerned, that reduction continued and increased for the year 1932. The figures in the last column under the heading "1927-1932, Inclusive," are the results of a pure mathematical average of the six preceding columns, covered respectively by the years 1927 to 1932, inclusive (T. 2022). It is my opinion that as we move out of the depression, one of the first things that will come back will be the values of land used for a useful purpose which would include the property of respondent that is being used. That would be the first character of land to meet the greater inflation. If times get better and receipts at the yards increase, the value of land in Zones A, B, C and E, and 1, 2 and 3 would work back to the value I placed on them in 1929 (T. 2023).

[fol. 1606] RESPONDENT'S EXHIBIT No. 133

Below is set forth the first three and last two columns of Respondent's Exhibit No. 133.

Value of Land Based upon Average Values, During Period 1927 to 1932.

Wm. E. Spratt, Appraiser

Zone	Acres	Sq. Ft.	Price		Total
A	72.249	3,147,163	$.29	Sq. Ft.	$912,677.27
B	17.293	753,286	.14½	Sq. Ft.	109,221.49
C	24.655	1,073,972	.14	Sq. Ft.	150,356.08
D	11.436	498,152	.18¾	Sq. Ft.	93,403.50
E	10.283	447,927	.14	Sq. Ft.	62,709.78
F	45.951	2,001,626	.05¾	Sq. Ft.	115,093.50
F-1	.874	38,071	.05¾	Sq. Ft.	1,903.55
G	22.752	991,077	912.50	A.	20,761.20
H	10.313	449,234	937.50	A.	9,668.44
I	9.4	409,464	937.50	A.	8,812.50
J	24.873	1,083,468	937.50	A.	23,318.44
K	16.083	700,577	650.00	A.	10,453.95
L	18.316	797,843	450.00	A.	8,242.20
M	12.516	545,197	312.50	A.	3,911.25
N	56.412	2,457,322	3375.00	A.	190,390.50
1	.544	23,697	.38¾	Sq. Ft.	9,182.59
2	3.19	138,956	.14¼	Sq. Ft.	19,801.23
3	14.362	625,609	.07½	Sq. Ft.	46,920.68
	371.502	16,182,641			$1,796,838.45

Cross-examination:

Since the time I testified in the prior proceeding, I have appraised for rate making purposes, in conjunction with

the Real Estate Appraisal Board at St. Joseph, the land of the St. Joseph Water Company and the land of the St. Joseph Light, Heat and Power Company. I have not appraised any stockyard property for any purpose other than the property of respondent. Page 1 of Respondent's Exhibit No. 132 is a rather extensive picture of respondent's land and surrounding areas. It is a reproduction of a photo- [fol. 1607] graph. There has been some retouching. The picture was taken quite a while ago (T. 2024). The St. Joseph Tannery, indicated in the picture as having smoke coming from the smoke stacks, is not now operating, but the building is still there. It ceased operations some time after the War closed. I do not know the date the photograph from which the reproduction was made was taken. It is today, though, a pretty good reproduction of the conditions that are pictured. It is a very fair representation of the area as it stands today. I think the main difference is that the tannery has ceased operating. There has been an addition made to the terminal warehouse which is much larger now than it was then (T. 2025). I do not remember the date of the addition to the terminal warehouse. I could not state whether it was before or after 1929. Page 2 is a map entitled "St. Joseph, Mid-Continental Point of Distribution," which was prepared by the St. Joseph Chamber of Commerce to indicate the railroad service which St. Joseph enjoys. All the railroads that cross at St. Joseph do not represent main lines with respect to railroads, but they connect with main lines (T. 2026).

In my report at page 3 I say: "The second page is a drawing which encompasses the entire United States. The city of St. Joseph actually is situated within about a hundred miles of the geographical center of the nation. There are six transcontinental trunk lines of railroads which converge here, and which reach out through their network of connections with other lines to the extremities of the country." One of the principal reasons why the stockyard and the packing houses were originally located at St. Joseph was on account of the railroad services which the vicinity afforded. Very extensive railroad service gives an extraordinary stability to the stockyard business in St. Joseph. [fol. 1608] The picture on page 4 of the St. Joseph wholesale district is an actual photograph (T. 2027). The light colored building in the right foreground is the Robidoux

Hotel. Some of the buildings in the immediate foreground of the picture are in the wholesale district. The principal wholesale district lies on the north and west of the Robidoux Hotel. The wholesale business had its beginnings in St. Joseph when the Hannibal and St. Joseph Railroad was completed into this section in 1858. The City of St. Joseph became a fur-trading station in 1826 and was laid out as a town in 1843 (T. 2027-a). The existence of the wholesale district and the building shown in the picture has a reflex action on the value of respondent's land. It takes a good city to invite good citizens and good citizens can make good employees. All this has a bearing on all of the land in the vicinity (T. 2027-b).

In a general way the commodities that are wholesaled out of the St. Joseph wholesale district include dry goods, groceries, millinery, hats and caps, boots and shoes, in general. There are a great many different wholesale stocks in St. Joseph. These are the principal ones. The building which appears to be immediately west of the Robidoux Hotel in the picture which is the Wheeler and Motter Building is apparently not occupied. The company which formerly occupied it went of business. Some of the companies have done likewise, I do not know how many (T. 2028).

The John S. Brittain Dry Goods Company and the Noyes and Norman Shoe Company have gone out of business. The decadence of the wholesale jobbing and distributing business of St. Joseph is not anymore outstanding in St. Joseph than it is anywhere else. The evolution of time has brought about an evolution in business. There has been a more direct distribution from manufacturer to con-
[fol. 1609] sumer. There was a time when St. Joseph sat at the western terminus of the most western railroad in America. They shipped all of the manufactured goods from the east as far as they could and here they were dumped off at the railroad and stored in large buildings and a large wholesale business developed here. As the railroads began to build west, as they began to fork and go into other directions, the field, the wholesale field of St. Joseph was more or less curtailed. Inroads were made further west. They shipped the goods further west and distribution began further west, but that happened to all sections of like character. There has been a general de-

cadence in the wholesale and jobbing business throughout the country. I do not know whether the grocery chain stores have done it or whether the decadence may have been the reason for the chain stores.

My statement that it has affected other places as well as St. Joseph means that the decadence of the wholesale business has affected other places in which wholesale businesses were carried on and cities which did not depend upon wholesale and jobbing business were not affected by its decadence. We had another very large business here at one time and through the decadence that took it away, in the evolution of time, we got rid of the livery stables and of the great westward pack mule teams, and so forth. We got rid of them and we succeeded it. The evolution of time carries evolution of business. I mean, though, that the livery stables and the great cross country pack mules and the great wagon teams that went through here made St. Joseph at one time a remarkable town on this western terminus for wholesale houses. We finally got rid of all those wagons, livery stables, and express trains, but the town picked up and supplied other industries. In other words, other things came to take the place of the wagon trains and the livery stables. It is true that in many cities [fol. 1610] where the wholesale business has practically died out and other industries have come in, the cities have built up to a much greater activity than they ever knew in the days when wholesaling was a big factor of business. As to whether something like that happened in Kansas City, Kansas City is a great big fine city and I do not know so much about it (T. 2031). St. Joseph is not feeling any ill effects from the loss of the wholesale business any more than the general depression. That is, it is sharing the nationwide depression. The records will show that we are increasing in new industries which are coming to the city, in population, business and so forth. As to the growth of St. Joseph between the 1920 and the 1930 census, the census does not indicate a very large growth within the city limits. Our city limits have not been extended, though, for some twenty odd years, and there is quite an extensive residential district just outside of the city that might very well be counted as St. Joseph. In 1900, as I remember, we had what we termed a padded payroll here. We did not consider the 1900 census to be very reliable, although

we had a man from Washington come on through here and investigated it and he reported it O. K. (T. 2032). Kansas City is a town of 500,000 people and we are a town of 80,000 people. I think it is correct that there has not been in St. Joseph any industrial expansion in the last decade comparable to that which has taken place in Kansas City. We have some industries that are located in St. Joseph that came here preferable to going to Kansas City, but I think the larger percentage of industry did prefer to go to Kansas City (T. 2033). It is approximately three miles from the wholesale district of St. Joseph in a general southerly direction to the respondent's property. In passing through this wholesale district to go toward respondent's land, you first pass through a part of the retail district of [fol. 1611] St. Joseph, then through railroad yards and past small stores and small industries all the way down to the viaduct and then crossing the viaduct South St. Joseph begins. The viaduct passes over the railroad tracks and just north of it is industrial property. After you pass the viaduct between the main street and the Missouri River, there is some rough territory immediately on the south of Sixth Street, then there is a broader expanse of level ground over the railroad yards out to the river. That broad expanse continues on down until you come to respondent's land but there are industries scattered all through there (T. 2034). Zone N of respondent's land constitutes part of that broad expanse.

I state on page 4 of Respondent's Exhibit No. 132 that millions of dollars have been spent in making St. Joseph a great center from which radiate in every direction the finest "all-weather" roads for vehicular traffic by which I mean hard surfaced roads. They are suitable for hauling livestock by truck into St. Joseph. I know of no kind of a storm which would stop livestock from being moved over those roads (T. 2035). These hard surfaced or paved roads have changed the method by which the stockyards receive stock very materially. Where formerly it came in on the train, now many of the nearest shipments come in by truck. These roads radiate in practically all parts of the territory from which respondent draws its livestock. These roads guarantee that St. Joseph will be in a position to get its fair share of livestock by truck, and I would like further to explain that by stating that St. Joseph is in the imme-

diate territory of the line of production of stock. A great many of the fat cattle and sheep and hogs are really conditioned within 100 miles of St. Joseph, they reach St. Joseph through the market by truck, and are mostly [fol. 1612] shipped out of here in the finished product by the train. I don't know as it lessens the necessity of the train for the long haul. As to the statement in Respondent's Exhibit No. 132, that respondent stockyard is the fifth largest in the world, I hope I did not take in too much territory. It is one of the largest, but the fifth in the country, maybe I should not say that, but it has been commonly termed that around here. Maybe I fell into the phrase of fifth, but it may be the fourth, I don't know. I measured that by the volume of livestock received annually. It is large enough so that the Secretary of Agriculture began on this one anyhow.

On page 26 of Respondent's Exhibit No. 132 is a picture intended to represent the Anchor Serum Company. That is on Zone B of respondent's property. It is my opinion that that picture is a drawing. It is a very fair representation (T. 2037). I do not know whether all of the buildings exist or not. The Anchor Serum Company was a revelation to me when I went down there and investigated it, and I live here in St. Joseph. There is a paved, all-weather road that leads down paralleling the railroad, but there is not any kind of an improved road to the south of Zone B. I did not say that this was a true and accurate picture of the buildings that exist. I said it was a fair representation of the nature of the improvements there. I do not know how many of the buildings shown on this picture are actually in existence (T. 2038).

On page 32 of Respondent's Exhibit No. 132 the picture entitled "Inso-Board Plant," is a drawing. I do not know whether the buildings and structures indicated all exist or not. There are some very substantial improvements there, and this indicates a substantial improvement.

With reference to the changes in zone areas agreed upon by Mr. Kosters and Mr. Henrici, I do not know [fol. 1613] whether the changes involved any changes in boundaries. There is a difference in the sum total of acreage. I do not know just exactly what that difference is, where it developed. As far as I know, the boundaries of the zones are the same as shown on the map which is

page 22 of Respondent's Exhibit No. 132. The zones were submitted to me (T. 2039) by Mr. Black with the areas marked on them. I understood it was Mr. Black and the Government who agreed. I think there was some variation in the areas of Zones A and B which were first submitted to me from the areas stated in my report on page 21.

I have glanced through the printed narration of my testimony in the previous hearing appearing on pages 153 to 194 of the abstract. I would say that that is substantially an accurate statement of what I testified to at that hearing. As to the general principles governing the appraisal of lands for rate making purposes, I tried to follow the Minnesota Rate Case instructions. I at least tried to follow the same principles that I did before (T. 2040). There has not been any change in my views as to the factors which govern or affect land values. There has been no change in my views as to the factors which govern and affect the values of lands of respondent except as I have noted in my report, the general depression. I set out in my appraisal of this year that all of the evidence that I put in at the previous hearing was in evidence again, followed the same principles. I would consider that Illinois Avenue and Packers Avenue would be the peak value of all that zone. To illustrate when I said that the highest value, the peak value of the property I considered as those two avenues, I did not mean in the center, I mean in the corners of the land that adjoins that section (T. 2041). I think the peak value is at the four corners of the intersection of Packers and Illinois Avenues. That is [fol. 1614] susceptible of higher uses than any other land in there. The value would not decrease as fast going east along Illinois Avenue as it probably would going west. The value holds pretty well as you go east, and I think holds pretty well as you go north along Packers Avenue on either side. The values do not hold so well going south along Packers Avenue (T. 2042). I do not know how wide a strip would take the higher values. I would want to know for what purposes the land was going to be used. My opinion does not cover any definite range of land at that place, but I was speaking just in a general way. The reason that the land at the intersection of Illinois and Packers Avenues is the highest valued land is that there are more people, more trade, more trucks and more ac-

tivity at that corner than at any other place in the zone. I stated that that land is susceptible of being used for greater purposes than the land along Illinois Avenue east of the railroad tracks (T. 2043).

I think it is available for use for a higher purpose than it is now used. As to what that would be I do not know. There are many things it could be used for that would intensify its use and intensify its value. I dare say any of those manufacturing feed institutions down there would be glad to be in that center where all the trucks come in. As to whether it would be a higher use and a higher value to have a feed mill which manufactures livestock feeds located at the corner of Illinois Avenue east of Packers Avenue, I am only judging by the fact that they try to get as close to the center as they can. The trucks all come along there in order to unload or receive their load of livestock (T. 2044). If this area was occupied by feed mills, the livestock would have to move over to a place that would be adjacent. The land could not be used for both purposes. My thought is that if there were a line of feed mills along each side of Illinois Avenue between Packers [fol. 1615] Avenue and the railroad track, the land would be more valuable than it is now, and that would be because trucks coming to the stockyards with livestock would stop at the mills to buy feed. I would not expect the feed mills to push the stockyards out of business. I still expect the stockyards to operate and control that portion of it. As to whether I would expect feed mills on Illinois Avenue within Zone A, as long as the stockyards exist, I do not know about that. They have never been able to get in there and I was just supposing that the stockyard management felt like they could not do it (T. 2045). Other than feed mills I do not recall anything right now that would make the land along Illinois Avenue in Zone A more valuable. The traffic is usually brought there by the fact that the stockyards unloading dock is there. The putting of the land to other uses would mean pushing the stockyards back from that land and if they would push it back too far, you would push the value out of it. If the stockyard were pushed back, whether the trucks would still come into Illinois Avenue would be entirely dependent upon the routing of the trucks, but I think that would be a practical way to route them (T. 2046).

In my statement relative to the corner of Sixth and Felix

Streets, I was not referring to the values out in the street itself as the street could not be sold. As I understand it, Packers Avenue and Illinois Avenue today are privately owned thoroughfares, thrown open to the use of the public, subject to the control of the stockyard. If the stockyards were to sell lots along those avenues, I don't know under what restrictions they would sell a lot. I don't understand that it is even within the range of a possibility of their ever selling a lot in through there. As to the probability of Zone A being used for wholesale and retail purposes, I don't [fol. 1616] know. If you had asked me ten or fifteen years ago whether or not there would be an unloading dock and a loading dock there for a tremendous amount of trucks, I might have thought that was impossible. I don't know what the future holds (T. 2047). I dare say there are a number of institutions that would be happy to adjust themselves in there if the company should change its policy. It is undoubtedly the existence of the stockyards business in that zone which brings the crowd. Whatever way business went, the crowds would recede with it (T. 2048). The Exchange Building used to be over on Missouri Avenue. At that time the peak of values was on Missouri Avenue. When the Exchange Building was moved to Illinois Avenue, that became the center of the crowds and the peak of values. From my knowledge in valuing real estate, the value does not always go with the crowds. It goes with the trading crowds and that is why values come in such streets as Felix, Edmond and Francis (T. 2049). There are more people on Edmond Street in 24 hours than on Felix Street, yet the value of Edmond Street is probably third and is first on Felix Street because it has the trading crowd. A store would locate on Felix Street because the trading crowd is there (T. 2050). At the stockyards, it is the stockyards that brings the crowd. I didn't say that the land along Illinois Avenue west of the railroad tracks could be sold for higher values than the land east of the railroad tracks along Illinois Avenue. I doubt whether it could be sold at any price and the stockyards still operate there (T. 2051).

My value of the land is of the naked land without improvements on it, knowing that the stockyards are on there, but I don't value the super-structures. I value the vacant, naked land. I am conscious of the fact that the

stockyards are there. I know the occupancy of the land, I [fol. 1617] know the history of the land, I know that, within less than 100 years ago, it belonged to the Indians, I know that it was a swamp land, I know that it was not used for anything. I have hunted over in it many, many times when it was a swamp and useless land. In 1896, Mr. Swift, and those interested with him, came here and purchased that land and reclaimed it and built their stockyard, railroad and packing houses, and it has, for thirty-five years, never been used for anything else (T. 2052).

As a developed piece of land, I know it is more valuable than any undeveloped piece of ground. I know it is impossible to move the stockyards from it and at the same time take the railroad facilities away, take the packing house facilities away, which constitute an industry that is there, working together, and you cannot remove it without injury to all the land that is there, and I decline to consider a value of that character. I have considered the land vacant and unimproved; I have not considered the value of the super-structures at all. I do not include in my valuation anything that Mr. Kosters has included in his valuation (T. 2053). The use of any land depends upon and governs its value. That is true of all land. Use of land makes value, and availability to use makes value. Availability to use, and on top of that actual use, makes value. It depends, of course, on how long a piece of land can have its occupancy. A peanut stand by the side of the road might have an unlimited use while a circus is here, but that is gone tomorrow. The St. Joseph Stock Yards is an institution that has been located there for 35 years, and we hope and believe it is a very permanent institution (T. 2054). The use of Zone A, having a practical purpose to serve, makes a value to the land. I did not say that the actual use of Zone A as the site of the St. Joseph Stock Yards Company does not add anything to [fol. 1618] its value. I said that Zone A, being in use, serving a practical purpose, available as it is, puts a value into it in excess of any raw land unused and in waiting (T. 2055).

With reference to my statement on direct examination that I did not include any going concern value in my land value in my previous appraisal, I did not mean to change the testimony I gave at the former hearing, but it is my

thought that the Secretary did not put the right interpretation on my testimony. In my 1929 appraisal, I place a square foot value of 30 cents on Zone A and 15 cents on Zone B. In Respondent's Exhibit No. 132, page 21, where a value of 26 cents a square foot is placed on Zone A and 13 cents a square foot on Zone B, it develops that the relationship of the figures is the same. That is to say, in each instance the value placed on Zone B is one-half that placed on Zone A, (T. 2056) although I did not intend it to be that way. I used the same method of determining value in 1929 and in 1932. The value of 30 cents per square foot on Zone A and 15 cents on Zone B, shown in Respondent's Exhibit No. 133, for the period 1927 to 1930, represents the value for each year that I found. That is, it is worth 30 and 15 cents, respectively, in each of the years. In my opinion there was not any change in value between 1927 and 1930. In 1931 there came a change in value due to the general economic conditions, and a further change in 1932 due to the same conditions (T. 2057). The development of those conditions from 1931 to 1932 carried the land values down a little.

When I appraised the Belt Railway Company's land, I necessarily had to take into consideration the value of the stockyards land which was adjacent and similar land. The Belt Railway land is one of the three intertwined and interlacing associations down there, each necessary to [fol. 1619] the other, the stockyard, railroad and packing houses. The Belt Railway land would necessarily have to take on its shape around the combined stockyard and packing house land in order to give the service. It is the same type and kind of land. Where it actually adjoins Zone A is the same type and kind of land as Zone A (T. 2058).

I considered the Belt Railway as a whole proposition. I testified that the land was worth so much a square foot as an assembled tract, all of the property. This tract in the service that it gives in the use to which it is applied goes around various properties of various values. The Belt Railway Company passes close by some land that I do not value nearly as high as I would the stockyards property or the packing house property. It goes by some acreage property of much lesser value than the stockyards or packing houses, and I would not like to say that it takes

on the value of the cheaper land that it happens to pass by. The Belt Railroad right-of-way adjoins one side of Zone E and also a part of it runs through Zone D (T. 2059). I appraised the Belt Railroad lands in 1920 to 1928, inclusive, in connection with the hearing before the Interstate Commerce Commission at Washington, D. C., which proceeding is known as Finance Docket No. 3906. The proceeding was under the Recapture Act or Section 15-A of the Interstate Commerce Act. From 1920 to 1928 that land, in my opinion, maintained approximately the same square foot value (T. 2060). As far back as 1913 I found the value of the Belt Railroad right-of-way the same as I found in my 1929 valuation. I did not have anything to do with the estimation or determination of the rent to be paid by the Belt Railroad Company in the lease executed January 1, 1929, with an expiration date of December 31, 1938 (T. 2061).

In my 1932 valuation of the zones within the ring of the [fol. 1620] Belt, I gave weight to that lease. There is no difference in the weight which I gave to it in my 1932 valuation and the weight I gave it in my 1929 valuation. It appears, in Respondent's Exhibit No. 132 that since my 1929 appraisal respondent has sold the right-of-way covered by the lease, and the price stated in the sale is substantially the same amount as would be arrived at by capitalizing the rental in the lease at 6 per cent (T. 2062). That sale was one of the considerations that I had and I gave it weight in arriving at my values. I know that at the time of that sale the stock of the Belt Railway Company was owned by the St. Joseph Stock Yards and that the managing officers of both companies were the same, but I considered that there was a sale on the ground that there were some disinterested parties who parted with $1,500,000.00 in cash. I mean that somebody who purchased the Belt Railway Company paid to the stockyards and to the Belt Railroad $1,500,000.00 in cash. That was for the entire railway (T. 2063). I am referring to the sale where the entire Belt Railroad was sold to some outside company, and I am also referring to the sale by the Stock Yards Company of the land occupied by the Belt Railway. I am referring to the sale discussed on page 13 of Respondent's Exhibit No. 132. This is the general sale of the entire

property of the Belt Railway Company. I do not know who the purchaser was. I am reasonably certain that it was to some company over which the Stock Yards Company has no control, although there is nothing of record to show that it was not (T. 2064). I am considering the sale of the Belt Railway Company for $1,500,000.00 as an arm-length's sale. I think that an investigation was made by a corps of engineers and estimators and evaluators who were here and went over this plant (T. 2065). The investigation just [fol. 1621] referred to is discussed on page 18 of Respondent's Exhibit No. 132. In the statement in the last paragraph on page 13 of Respondent's Exhibit No. 132 that the principal worth of the Belt Railway property is the total value of the land, equipment, and so forth, by the term "equipment" I refer to engines, cars and so forth, and all the structural property and possessions. There was also some cash used as working capital. The sale of the Belt Railroad was effected by a sale of its capital stock (T. 2066). The assignment of the capital stock carried with it all of the equipment and land. Prior to making the assignment of the stock the Belt Railroad purchased from the Stock Yards Company the land it previously occupied by lease. Referring to page 3 of a pamphlet entitled "Before the Interstate Commerce Commission, Excess Income of the St. Joseph Belt Railway Company, Financial Docket No. 3906, Abstract of Evidence and Brief on Behalf of the St. Joseph Belt Railway," that is the proceeding in which I testified that I had valued the Belt Railway Company's land for the period 1920 to 1928 (T. 2067). My idea of the value of the Belt Railroad Company's land at that time was 30 cents per square foot.

"Mr. Bohannan: Now, Mr. Spratt, I refer you back to page 13 of Respondent's proposed Exhibit 132 and to page 21 of that same exhibit and I ask you to tell us how, by what process, outlining the steps of the process as you go along, you establish any relationship whatsoever between the price of $1,500,000.00 paid by somebody for the (T. 2078) capital stock of the Belt Line Railway Company and the values of 26 cents for Zone A, 13 cents for Zone B, 15 cents for Zone D, and 11 cents for Zone E, which you placed on those respective zones?

"A. Well, my value of Zone A at 26 cents per square foot is my idea of its worth and when I make reference to the sale of the Belt Railway Company which is described [fol. 1622] under sales sheet 54 from the Stockyards Company to the Belt Railway Company, I consider that sale in which there is something like $1,000,000 in money that was transferred from disinterested and outside parties to the stockyards for what must have been land value, I consider that corroborative of my idea of the value of Zone A. My value of Zone B is of lesser value than Zone A. There comes a peak price, and as you recede from the center or the peak price, you recede in value very fast sometimes. It develops that my Zone B is one-half of what Zone A is. I did not intentionally or knowingly make it one-half. My computation made it one-half. Zone C, do you also——?

"Q. No, D. Just one minute, let me be accurate. D and E were the other two.

"A. D. D is a tract of land containing 11.436 acres which lies immediately north of Swift and Company's plant and immediately south of the St. Joseph Warehouse Plant. It is bisected by the Belt line. It is a tract of ground that for 25 or 30 years has been lying there unused, ready to be called upon. I have not given to it the value that I would give to the Stockyards Company or to Swift and (T. 2079) Company or to the St. Joseph Warehouse Company land, because it is not in any practical use. With all the elements of value, use probably has the greatest bearing. The more and diversified uses to which a piece of property might be applied tends to its increased value. I gave a lesser value to D than I did to A because the land is not serving or been developed as A has, and I don't mean developed in superstructures, I mean developed in the land itself as regards to A and as regards to B.

"The Examiner: Five minute recess.

"(Whereupon a fifteen minute recess was taken).

[fol. 1623] "Mr. Bohannan (continuing): Mr. Spratt, I have had my last question and the answer transcribed by the reporter and this is what I asked you: 'Now, Mr. Spratt, I refer you back to page 13 of Respondent's proposed Exhibit 132 and to page 21 of that same exhibit and I ask you to tell us how, by what process, outlining

the steps of the process as you go along, you establish any relationship whatsoever between the price of $1,500,000 paid by somebody for the capital stock of the Belt Line Railway Company and the values of 26 cents for Zone A, 13 cents for Zone B, 15 cents for Zone D, and 11 cents for Zone E, which you placed on those respective zones?

"'A. Well, my value of Zone A at 26 cents per square foot is my idea of its worth, and when I make reference to the sale of the Belt Railway Company which is described under sales sheet 54 from the Stockyards Company to the Belt Railway Company, I consider that (T. 2080) sale in which there is something like $1,000,000 in money that was transferred from disinterested and outside parties to the stockyards for what must have been land value, I consider that corroborative of my idea of the value of Zone A. My value of Zone B is of lesser value than Zone A. There comes a peak price, and as you recede from the center or the peak price, you recede in value very fast sometimes. It develops that my Zone B is one-half of what Zone A is. I did not intentionally or knowingly make it one-half. My computation made it one-half. Zone C, do you also——?

"'Q. No, D. Just one minute, let me be accurate. D and E were the other two?

"'A. D. D is a tract of land containing 11.436 acres which lies immediately north of Swift and Company's plant and immediately south of the St. Joseph Warehouse plant. It is bisected by the Belt line. It is a tract of [fol. 1624] ground that for 25 or 30 years has been lying there unused, ready to be called upon. I have not given to it the value that I would give to the Stockyards Company or to Swift and Company or to the St. Joseph Warehouse Company land because it is not in any practical use. With all the elements of value, use probably has the greatest bearing. The more and diversified uses to which a piece of property might be applied tends to its increased value. I gave a lesser value to D than I did to A because the land is not serving or been developed as A has, and I don't mean developed in super-structures, I mean developed in land itself as regards to A, and as regards to B' (T. 2081).

"Now, Mr. Spratt, I asked you to develop in this evidence the process whereby you related the sale of the Belt Railroad to outside parties at $1,500,000 to certain square

foot values on certain zones and in your answer you refer me to sales sheet 54, which does not cover that transaction at all, but covers a lease made in the year 1916 from the St. Joseph Stockyards Company to the St. Joseph Belt Railway Company. Now, Mr. Spratt, is that all you can say as to the relationship of the sale of the Belt Railroad Company to outside parties and your valuation of 26 cents per square foot on Zone A, is that all the relationship?

"A. I want to make one correction. I said 'sales sheet 54.' It should have been sales sheet 55.

"Q. Yes, sir. Now, then, sales sheet 55 that you have referred me to is a sale on December 11, 1929, from the St. Joseph Stockyards Company to the St. Joseph Belt Railway Company of the right-of-way lands of the last named company. Now, how does that transaction connect your value of 26 cents per square foot for Zone A with the price of $1,500,000 paid to the St. Joseph Stockyards [fol. 1625] Company for the capital stock of the St. Joseph Belt Railway Company?

"A. I stated before recess that this sale was corroborative of my values placed on these zones. I will restate that this sale of the land occupied by lease by the St. Joseph Belt Railway Company and purchased from the St. Joseph Stockyards Company in order that they might consummate their sale of the entire property, is corroborative (T. 2082) of my value on Zone A.

"Q. Now, then, as I understand it, you are basing your value on Zone A on this sale shown on sales sheet 55, which is a sale of the right-of-way lands from the Stockyards Company to the Belt Railway Company, is that correct?

"A. I did not say that.

"Mr. Strack: I suggest——

"Mr. Bohannan (continuing): All right, now, then, as I understand it, you are not basing the 26 cents per square foot on that sale?

"A. I said that I have placed a 26 cent value and that this sale following my last four or five years of valuing on this corroborates and establishes my value as approximately correct.

"Q. Now, as I understand it, your 26 cents per foot on Zone A is your value for that zone, based on nothing in particular, is that correct? Is it or is it not?

"(Laughter.)

"Mr. Strack: Let the record show there was much laughter at this point in the proceeding.

"The Witness: Well, I spent 44 sheets here trying to tell the process by which I could and I have also included in this a great deal of testimony that was heretofore given in this case in 1929, giving the process by which I arrived at this value (T. 2083).

"Q. And those values then are based on your report [fol. 1626] and evidence and testimony in the 1929 hearing, plus your report and testimony in this hearing.

"A. Yes, sir.

"Q. All right. Now——

"Mr. Rynder: From the investigations beyond those reports.

"The Witness: Plus my report here and these 153——

"Mr. Rynder: I mean, of the investigations that led up to those reports.

"The Witness: Oh, yes, sir.

"Mr. Bohannan (continuing): Now, Mr. Spratt, I take it that you regard this transaction shown on sales sheet 55 as corroborating you?

"A. Yes, sir, 82.356 acres, having been sold, for which cash was paid, and coming in between my previous appraisal and this date, I consider that it is corroborative and very materially establishes the correctness of my estimate of values.

"Q. Yes, sir. Now, suppose this figure which I note at the bottom of sales sheet 55, reading 82.356 acres, $1,020,499.05, suppose that it had in fact been $20,499.05, that is, a million less, would that have had any effect whatever on the square foot value you would have placed on Zone A?

"A. It was not that, and I cannot consider it that way.

"Q. And you cannot answer whether a different value stated in that sale would have affected your price for Zone A, your value for (T. 2084) Zone A?

"A. I do not try to answer it that way.

"Q. You do not know?

"A. I don't try to answer it, when it is not in accordance with facts.

"Q. And you do not know whether that stated price of $1,020,499.05 had any effect on the square foot price which you placed on Zone A?

[fol. 1627] "(Whereupon, the question, as heretofore recorded, was read by the reporter.)

"A. Well, I have stated before and I will restate it, that previous to the sale of this land belonging to the Stockyards Company and the Belt Railway Company, in order that they might consummate their sale, I had valued the ground at 30 cents per square foot, the ground was carried, the value of the ground was carried on the St. Joseph Stockyards Company's books at an appraisal made even previous to my appraisal, made by the American Appraisal Company at $1,020,499.05. That too was corrobative of my value of 30 cents per square foot and the Stockyards Company, after receiving the cash for the sale of the land to the Belt Railway Company, credited to their land account $1,020,499.05. That too was corroborative of my value of 30 cents, or 26 cents per square foot.

"Q. But, Mr. Spratt, as I understand you now, you placed a value of 26 cents per square foot on the land before this sale took (T. 2085) place, and the sale merely corroborated you, is that it?

"A. I placed a value of 30 cents per square foot before this sale took place.

"Q. Now, what does this sale corroborate, 30 cents or 26 cents?

"A. Both of them.

"Q. But you cannot analyze this sale and show how it corroborates either 30 cents or 26 cents, isn't that correct?

"Mr. Rynder: I submit the witness has answered that question three times.

"Mr. Strack: How many times did you say?

"Mr. Rynder: I said three, maybe I am wrong?

"Mr. Strack: I think so.

"The Witness: I do not try to process my mind——

[fol. 1628] "Mr. Rynder: I would advise the witness not to answer a question of that kind "yes" or "no."

"Mr. Bohannan: I would like to have an answer.

"Mr. Rynder: Read the question, and I advise you not to answer a question of that kind "yes" or "no." I wish you would read the question.

"(Whereupon, the question, as heretofore recorded, was read by the reporter.)

"The Witness: Well, I started to say a little while ago and was interrupted, that I have no means of processing my mind into the details of that character (T. 2086).

"Mr. Bohannan: Mr. Examiner, I am bound to protest. This witness has been brought here to appraise and place values on these lands. I am asking him questions as to how he arrived at those values. I can get no answers to those questions. Now, I think, in all fairness, the Government is entitled to have a witness who comes appraising property in a rate proceeding, to answer fairly and fully and candidly questions as to how he arrived at his values. The witness, in his report, says that these transactions I am asking him about are the very transactions that bear most closely on the value of this land, and now I am asking him to relate these things to the value of the land, and to show how there is any connection between the $1,020,499.05 and the 26 cents per square foot he places on Zone A, but he will not tell me whether he can analyze the matter and show that or whether he cannot. He just simply evades it. Now, I think I am entitled to have answers to my question and not have to be asking and asking and asking the same question over and over, in a vain endeavor to get it answered.

"Mr. Strack: I submit he has had a full and complete answer each and every time, not one time, but every time. The trouble with counsel is that he wants one kind of an answer and when witness refuses to make that specific [fol. 1629] answer, he wants to ask it again, in the hope that the witness will slip in a word that will tend to confuse. Mr. Spratt has been just as straightforward as any witness on this stand, and I resent the insinuation that he has not been straightforward.

"Mr. Rynder: I wish to add that we desire to show the utmost courtesy to counsel for the Government. If he wishes to continue his (T. 2087) protest, we will be willing to have him continue his protest for an hour or two, or the rest of the day.

"Mr. Bohannan: I consider it is for the Examiner to conduct this proceeding.

"Mr. Rynder: Well, we quite agree with that, and it is not for Mr. Bohannan to conduct it.

"Mr. Strack: Can we proceed, Mr. Examiner?

"The Examiner: Yes, sir; as I understand it, there is no question pending.

"Mr. Rynder: We have no objection to campaign speeches from Mr. Bohannan, if he wants to make them. We wish to show the utmost courtesy in that respect.

"Mr. Bohannan (continuing): Now, Mr. Spratt, we are right back where we started. I asked you about the sale of the capital stock of the Belt Railroad Company to an outside interest, and asked you how you related that to the price of 26 cents, or the value of 26 cents per square foot on Zone A, and, for quite some time, you have been telling me something about, not much, but something, about how you related the sale by the Stockyards Company to the Belt Railway of the Belt Railway right-of-way lands, and that was not what I asked you in the beginning at all. It was another transaction entirely. Now, will you go back to that other transaction and tell me how you related that to your value of 26 cents per square foot?

[fol. 1630] "Mr. Strack: I think he has answered that specific question time and again (T. 2088).

"Mr. Bohannan: The record will show.

"Mr. Rynder: Mr. Spratt, can you add anything in answer to this question than you have not already stated in response to the previous questions of counsel for the last hour?

"The Witness: I can add that I am not accustomed to being reprimanded for trying to tell the truth, and I am not just pleased that I should keep on repeating, and attempting to repeat and say over again in different languages.

"Mr. Rynder: Of course, we have to sympathize with you in that respect. We cannot help you, but what I am asking is whether you can add anything to the answers you have previously made.

"The Witness: I can repeat them, that is all I can do.

"Mr. Bohannan: Now, Mr. Examiner, can I have an answer to my question?

"The Examiner: Mr. Bohannan, as I understand it, Mr. Spratt says that he has answered the question as fully as he can. Is that correct, Mr. Spratt?

"The Witness: Yes, sir.

"Mr. Bohannan: Mr. Examiner, I find myself in this position: apparently the witness will not answer my ques-

tions. I can keep on asking them but it is simply taking time in the record. I have asked this witness time and time again to show, by analysis, how he relates the sale of the Belt Railway Company's capital stock for a million and a half dollars to the value of 26 cents a foot placed by him on Zone A. Now, Mr. Examiner, in all fairness, I submit this question to you,—has (T. 2089) the witness done that?

"The Examiner: Mr. Bohannan, I have not studied this thing like you counsel have, or like this witness has. All [fol. 1631] I can say is the witness says that he has answered the best he can.

"Mr. Bohannan: Then, when I ask him if he can relate the thing by analysis, I cannot get any answer to that. He will not tell me whether he can or cannot.

"Mr. Rynder: Mr. Examiner, let me suggest this: that there is a procedure prescribed by law, that the Secretary of Agriculture may require a witness to answer a question, if he refuses to do so. We are perfectly willing to accept that, but Mr. Bohannan wants to try and force a further answer on this question.

"Mr. Bohannan: Well, Mr. Examiner, at this point, I am going to move to strike all of the testimony of this witness and to exclude from the record his report which has been offered as Respondent's Exhibit 132, on the ground that the witness refuses to answer proper questions put to him on cross examination.

"The Examiner: Motion to strike denied.

"Mr. Bohannan: May I ask the Examiner to give me a five-minute recess?

"The Examiner: Yes, sir.

"(Whereupon the hearing recessed for five minutes.)

"Mr. Bohannan: Mr. Examiner, in view of the refusal of the witness to answer proper questions on cross examination, further cross (T. 2090) examination will be a vain and useless procedure, and, therefore, we will not further cross examine.

[fol. 1632] Redirect examination:

On the picture which is page 1 of Respondent's Exhibit No. 132, as explained in the last sentence in the first paragraph on page 3 of that report, certain things have been placed on the photograph in pen (T. 2091). Those things

are readily discernible by looking at the photograph. The tannery that was referred to on cross examination was closed before the hearing in 1929. Page 2 of the report attempts to show the railroad service at St. Joseph, and not at other points. As indicated in the left hand corner, at the bottom of the page, it shows the connections of St. Joseph with various locations, towns and cities in America.

On cross examination I named John S. Brittain Dry Goods Company as having gone out of business. That should have been John S. Richardson (T. 2092). Quite a number of industries have come to St. Joseph in the last decade which would take the place of these wholesale houses. Amongst them would be the Quaker Oats Milling Company, which employs many many more times the amount of people employed in the wholesale houses; the development of the Western Tablet Company, which is an extensive employer of labor; the Insoboard Company, and a number of new industries which abundantly supply the place occupied by the wholesale trade and business that has gone away. Of this change in the wholesale situation, one of them occurred since the last hearing and the others were probably before the last hearing. Since the last hearing the wholesale meat district has moved from 4th and [fol. 1633] Sylvania to the stockyards itself, on Packers Avenue near Illinois Avenue (T. 2093).

When I mentioned the availability of land near Packers and Illinois Avenues for manufacturers of feed, I referred to companies similar to the Famo Feed Milling Company. It was not my intention to say that the land would be more valuable if the feed mills were actually there. The feed mills company would want to be there on account of the value of it now, or its accessibility. This land is not available now because the Stock Yards Company under no circumstances would permit it to be so used. Such availability would be subject to the wishes of respondent. It would require an entirely new adjustment of respondent's facilities. It is entirely up to the Stock Yards Company (T. 2094).

The traffic in the vicinity of Zone A results from the packing houses, respondent, and all those industries that are kindred and located there. The livestock business, including the packing business and transportation of both types, have drawn that traffic there. That traffic is what

I would call a trading traffic. They haul in and they haul out, especially through the truck service. They buy and sell livestock and the finished product of livestock. In my opinion all of the value of Cherokee Street and Illinois Avenue in what we term the retail district is reflected value from the stockyards and packing houses (T. 2095). If the Stock Yards Company would permit it, I would judge that land near Packers and Illinois Avenue would be very inviting places for filling stations, as filling stations are continuously seeking traffic centers, and rather inviting prices have been paid for land and rental in places more remote than that corner. I have in mind that the Sinclair Company is leasing a location on a rental basis from the Belt Railway Company, near Zone C, which capitalizes about $21,000 [fol. 1634] per acre. Packers and Illinois Avenues, if it could be obtained, would be worth many many times what that is.

When I said Felix Street could not be sold, it was because it is public property and not that it has no land value. That does not mean that Packers and Illinois Avenues have no actual land value (T. 2096). Undoubtedly both of those streets have actual land value. I have appraised both of those streets. I have not appraised Felix Street.

The land occupied by Zone A has particular adaptability for stockyards use and I have taken that into consideration in appraising Zone A. By reason of the fact that Zone A is being used for stockyards purposes, I have not added any theoretical multiplier, due to acquisition or condemnation cost. That is also true as to the other zones being used for stockyards purposes. In connection with the statements I made regarding lesser values placed on Zones B, E, and D, I had in mind that they are not topographically of the same level as Zone A, which likewise applies to Zone C, F and N (T. 2097). Zones 1 and 2, I think, are substantially of the same level as Zone A. They are the proper level anyhow in comparison with the various grounds around them. They would be classified along with Zone A as filled land, completely filled up to establish grades.

Thereupon, counsel for the Government renewed their motion to strike all of the testimony of the witness on the ground that he would not, on cross examination, answer proper questions put to him by counsel for the Government, and, therefore, in effect, refused to submit to cross exami-

nation on proper, material and substantial matters. Counsel for the Government also objected to the introduction in evidence of Respondent's Exhibit Nos. 132 and 133 on the same grounds on which they moved to strike the wit- [fol. 1635] ness' testimony, and on the further grounds that the said exhibits and the witness' testimony show that the conclusions expressed in the exhibits were arrived at by methods contrary to the law of the land for the valuation of land for rate making purposes. The respective motions of counsel for the Government were denied and the respective objections overruled by the Examiner (T. 2098).

Land Values

THEO. J. QUINN, a witness called by respondent, being first duly sworn, testified in substance as follows:

Direct examination:

I live in St. Joseph and have lived there about 28 years. I am in the real estate business and have been in the brokerage end of it since 1922. Prior to that time and before the war I was in the discount department of a bank located in this city, the Empire Trust Company, at a time when that bank was making a large number of real estate loans. My work did not have anything to do with the making of those loans at that time, but I was familiar with each and every one of them (T. 2099). I kept records of the loans, more as a discount policy. I was in the World War and have been active in the American Legion since the war, serving one year as commander of the local post. Since 1922 I was with the H. S. Smith Investment Company as an employee on a commission basis for about three years, and since that time have been operating with Robert E. Gardner under the firm name of Gardner & Quinn. While with the H. S. Smith Investment Company my work was brokerage of real estate entirely, including residential property, retail, industrial, and subdivision (T. 2100). By that I mean I was in the business of buying and selling property, acting as a broker. [fol. 1636] Since my connection with the firm of Gardner & Quinn my business has been very much the same type, and in addition we have our own insurance business. We

have brokered loans and do appraisal work. Our firm has been employed on many occasions by local and foreign corporations to purchase real estate. That is particularly true of various oil companies operating in this vicinity. We have had charge of the recent location or expansion program of the Shell Oil Company, Mid-Continent Petroleum Corporation, Independent Oil Company, Skelly Oil Company, and Sinclair Refining Company, and at the present time and for the past two months, we have been employed in leasing a number of properties for two or three other companies (T. 2101). I have done considerable work in appraising real estate. I have been a member of the Real Estate Board since its organization here about ten years ago and have served at various times on the appraisal committee. I shared in the appraisal of some $200,000 worth of property taken over by the city for school purposes and also appraised the Sinclair Refining Company's holdings about four years ago. That is, by their holdings, I mean real estate. I have been employed by owners of property that had been taken by the State of Missouri for highway purposes; and as director and an officer at various times of the Real Estate Board, I am familiar with all of the appraisals made during that time by the Board. I have also been employed by the supervisor of building and loan associations and the receivers of building and loan associations to appraise properties that have been taken over by the receivers or by the associations in this part of the State. At various times I have offered court testimony in the above cases, and as a member of the Real Estate Board Committee I have just completed last month an appraisal [fol. 1637] for the St. Joseph Railway, Light, Heat & Power Company, which comprises the valuation of all real estate owned by this organization, and included their interurban right-of-way between St. Joseph and Savannah (T. 2102), Missouri, about 16 miles north of here. The Real Estate Board was asked to make this appraisal for rate-making purposes, asked by the State Public Service Commission, and the Committee was comprised of three members, Mr. William E. Spratt, Mr. Joseph Corby, and myself. We were chosen and agreed upon by the Public Service Commission, the City of St. Joseph, and the Street Railway Company. Those three interests agreed to be bound by the findings of this committee. On an appraisal such as this,

the appraisal committee is always checked by the directors of the Real Estate Board, and in this particular case the results were checked and agreed to unanimously by the members of the directorate (T. 2103.)

During the period of my residence in St. Joseph and while I have been in the real estate business, I have been familiar with what is known as the stockyards district near South St. Joseph. My real estate dealings have extended to that district, having sold a good many properties in the neighborhood and vicinity of the stockyard. My appraisal experience has extended to that district. In the appraisal of the Street Railway Company's properties, there were some three or four parcels in that immediate vicinity.

I was asked about November 1, 1932, by respondent to appraise the land it now owns, and have made such an appraisal. Since that time there has been scarcely a day that I have not (T. 2104) done some work on that appraisal. Probably in all, I think, it would be substantially a month's steady work. Before arriving at my valuation I did some preliminary work. I was first furnished a map by the [fol. 1638] Stock Yards Company showing the various zones that had been designated by Mr. Spratt at the time of the former hearing and which, I understand, were approved and adopted by the Secretary of Agriculture in his decision. The areas, I understand, had been recomputed by representatives of the Stock Yards Company, due to sales and resurvey, and I also believe that the areas of the zones were the subject of agreement between the Stock Yards Company and the Government engineer. And, then, I visited each and every one of the zones, going around them and through them and noting the contour and general lay of the ground, as well as the character of the uses the various zones were put to end the improvements on same. Then, I made the trip, a trip which I had made before, of course, on many occasions, from the uptown district to the stockyards, over the various routes, noting the accessibility of the zones for vehicular traffic and the facilities afforded by the Street Railway Company, railroads, and bus service, and after having done this, I was (T. 2105) furnished a group of sales sheets that had been computed, or compiled rather, by a local abstractor, to which the Government appraiser, Mr. Zelinski, made some additions. In all, they totalled 147, I believe. Then, in company with Mr. Zelinski

and Mr. Spratt, we spent the greater portion of perhaps a week interviewing grantors and grantees in all but the first 53 of these sales, ascertaining, as well as we could, the conditions attending the various transfers. These first 53, I understood, had been previously investigated by Mr. Spratt and a representative of the Interstate Commerce Commission, and it was agreed among ourselves, that is, Mr. Spratt, Mr. Zelinski, and myself, to accept the results of this investigation relative to these first 53 sales. I then personally, part of the time with Mr. Spratt and Mr. Zelin- [fol. 1639] ski, and on several occasions by myself, inspected the premises covered by virtually every one of the sales shown on sales sheets No. 1 to 147 inclusive (T. 2106).

Shortly after the middle of November, about the 18th of November, I think it was, I went to Omaha and while there interviewed Mr. Lewis C. Sholes and Mr. Albert Tukey, the gentlemen who, I learned, had appraised the stockyards property for the Omaha Stockyards Company sometime previously. Mr. Sholes took me down to the stockyards in his car, and we drove completely around it and in and through it and spent some time with Mr. Schellberg, who is president of the Omaha Stockyards Company, at his office in the Exchange Building. I learned that these two gentlemen had made a very complete appraisal of the Omaha stockyards, and it was my intention to discuss with them the various methods that they used, and felt that it would be helpful to view other stockyards property and to discuss various questions arising in appraisal work with those who had had recent experience in this kind of work. I chose Omaha for the reason that it was close by and it was my understanding that it was the last stockyard that had been appraised. I talked with these two gentlemen with a great deal of interest, particularly because it is my understanding that Mr. Sholes is a member of the National Association of Real Estate Board's Appraisal Division, and, of course, discussing these matters with a man of that standing made it particularly instructive to me, I felt.

I was elected president of the local real estate board shortly after the first of the year (T. 2107) for the calendar year 1933, succeeding Mr. Spratt. I have made studies and familiarized myself with publications dealing with the appraisal of real estate. The National Association's Journal, which is published bi-monthly, carries from time to

[fol. 1640] time articles on appraisal work, which I read with interest. I have also read a tome by Mr. Zangerle and by Mr. Stanley L. McMichael, both of whom are considered authorities in real estate appraising.

I have completed my appraisal of the lands owned by the respondent and have prepared and submitted to respondent the appraisal report, which is Respondent's Exhibit No. 134 (T. 2108). That exhibit was prepared by me personally and truly and correctly sets forth my opinion of the value of respondent's lands. The areas for zones were given me by the respondent, and I understand they are agreed areas. The zones are the same as used by Mr. Spratt and adopted by the Secretary, although there have been some changes in the area of these zones but not in the boundaries. Those changes were due to sales and a resurvey (T. 2109). At the time I was retained to make the appraisal, Mr. Topping asked me to make an attempt to use these same zones, with the exception that I could rezone them or resubdivide them in any manner that I saw fit. His desire, as I understand it, was that when I had completed the appraisal, it would be possible to have some relationship between the zones I was using and the zones used by Mr. Spratt, and it is my understanding that Mr. Zelinski was asked to do the same thing and agreed to do so. (T. 2110). I did not make any subzones because I felt that the zoning used by Mr. Spratt and Mr. Atkinson in the former hearing was sufficient and represented distinct break lines of value, and felt there was no necessity of making a further rezoning, or rezoning it further. The zones that are outlined in red on page 9 of Respondent's Exhibit No. 134 are the zones respondent is claiming as used and useful land. Those outlined in yellow are not claimed. Mr. Topping gave me that information, and I am not responsible for that designation in any manner whatso-[fol. 1641]-ever. In Respondent's Exhibit No. 134 I have completely set forth the method used by me in arriving at the value of respondent's land. The summary in which I have given my opinion of that value is on page 10 (T. 2111). The statement of the method used appears on pages 4 to 6 inclusive. On page 6, I refer to the sales sheets 1 to 147, which form a part of Government Exhibit No. 128 and which are the sales sheets Mr. Spratt, Mr. Zelinski, and I investigated. I understood that they were to be in-

corporated in the Government report, but Mr. Zelinski and I saw no need of the duplication. I considered the same transfers that were set forth in sales sheets 1 to 147 and in Government Exhibit No. 128.

I was aware that Mr. Spratt was also employed by respondent as a land appraiser. We did not cooperate in any manner except as to the investigation of these 147 transfers (T. 2112). I was not at all influenced by Mr. Spratt's opinion as to the value of this land owned by respondent, nor did I discuss with him the value of that land, until after we had compiled and turned in our reports. At that time we exchanged values, but as a result of that exchange I did not alter my values at all. I have not altered them since I turned in the report, nor since we exchanged values. I have not been influenced at all by respondent or any of its officers or employees in the making of this appraisal. The summary which appears on page 10 represents my own personal opinion of the value of respondent's lands (T. 2113).

[fols. 1642 & 1643] RESPONDENT'S EXHIBIT No. 134

Below appears pages 10 and 9 of Respondent's Exhibit No. 134, which respectively show the summary of the valuation by Mr. Quinn by zones and the map upon which the location of each of these zones appears.

Zone	Acres	Square Feet	Sq. Ft. Rate	Acre Rate	Zone Value
A	72.249	3,147,163	.35c	$15,246.00	$1,101,507.05
B	17.293	753,286	.15c	6,534.00	112,992.90
C	24.655	1,073,972	.12½c	5,445.00	134,246.50
D	11.436	498,152	.12½c	5,445.00	62,269.00
E	10.283	447,927	10c	4,356.00	44,792.70
F	45.951	2,001,626	.05c	2,178.00	100,081.30
F-1	.874	38,071	.01c	435.60	380.71
G	22.752	991,077	.03c	1,306.80	29,732.31
H	10.313	449,234	.04c	1,742.40	17,969.36
I	9.400	409,464	.04c	1,742.40	16,378.56
J	24.873	1,083,468	.02c	871.20	21,669.36
K	16.083	700,577	.015c	653.40	10,508.66
L	18.316	797,843	.01c	435.60	7,978.43
M	12.516	545,197	.005c	217.80	2,725.99
N	56.412	2,457,322	.08c	3,484.80	196,585.76
1	.544	23,697	.50c	21,780.00	11,848.50
2	3.190	138,956	.15c	6,534.00	20,843.40
3	14.362	625,609	.10c	4,356.00	62,560.90
	371.502	16,182,641			$1,995,071.39

[fol. 1644] In my appraisal I did not include anything but the bare land value. I did not include in the land value what is known as going-concern value. I followed, as well as I could, exactly the same method which I used in arriving at the value of other lands in the course of my experience as a real estate appraiser where I valued the land for rate-making purposes. In appraising real estate, in order to find the true value thereof, there is not more than one kind of true value. The figures on page 10 of Respondent's Exhibit No. 134 represent my opinion of the true value of respondent's land.

The land occupied by Zone A has peculiar adaptability or availability for stockyards use, and I have taken that into consideration in my appraisal (T. 2114). I have likewise taken into consideration, in respect to other zones, any particular adaptability that they may have for stockyards use. Generally the zones that lie within the circle of the belt are more particularly adaptable or available for stockyards use. Zone A, of course, is the particular zone. These other zones within the belt would have adaptability or availability for stockyards use in a less degree than Zone A. By reason of the fact that Zone A was being used for stockyard purposes, I have not added any theoretical multiplier due to acquisition or condemnation cost (T. 2115).

Cross-examination:

My service in the Army during the time of the World War had no connection with the appraisal or other handling of real property, nor did my membership and office in the American Legion, except as it throws me in contact with a large number of property owners and prospects who have dealings in property. These things do not in any great measure add to or take away from my qualification to ap-[fol. 1645] praise respondent's land. My membership in the Real Estate Board's Appraisal Committee for several years refers to the St. Joseph Real Estate Board. That committee has been called upon to make appraisals for rate-making purposes since I have been a member (T. 2117). The only case that I shared in for rate-making purposes is the appraisal made by the Appraisal Committee of the St. Joseph Real Estate Board for the St. Joseph Railway, Light, Heat & Power Company, which company operates the street railway in St. Joseph and furnishes

electricity to the inhabitants of the city and steam heat to a part of the downtown district. This appraisal covered all of the land of this company, and the proceeding has to do with rates, I think with the particular service of furnishing power. The appraisal was made by the committee of three that was chosen to act as the appraisal committee in that particular case (T. 2118). The number of members which constitutes the appraisal committee of the Real Estate Board is varied from time to time. It has been the practice of the president of the board in the past few years to pick a group of nine members from the membership, and three of those are chosen, from time to time, to serve on different committees as the appraisal committee for that particular job. In this case, however, the entire membership of the Board was submitted to the Missouri Public Service Commission and they were asked by Mr. Spratt, who was president of the Board at that time, to choose three members, and when those members were chosen, they would be appointed as the appraisal committee for that particular job, and, in turn, the interested parties, that is, the Light Company, the Service Commission, and the city agreed to be bound in so far as the valuation of the real estate was concerned by the findings of that committee, whose findings, in turn, as stated in [fol. 1646] my direct examination, were reviewed by the directors of the Real Estate Board. Relative to the employment of the committee, it is my understanding that a request first came to the (T. 2119) Real Estate Board from the engineer of the Missouri Public Service Commission. That appraisal was completed along about the latter part of November or the first of December. There were three members of the committee, and their findings were reviewed by the Board of Directors of the Real Estate Board. The members of the committee all worked together in making the appraisal (T. 2120). As well as I remember, the Board of Directors agreed unanimously with the findings of the committee. That is the only appraisal for rate-making purposes that I have made other than the appraisal of the respondent's land.

I started the appraisal of respondent's land around the first of November, 1932. My letter addressed to the Stock Yards Company, which is page 1 of Respondent's Exhibit

No. 134, would indicate that it was finished on December 31, 1932. I do not know that I reached my conclusions as to value at that particular time. It was a short time previous to that (T. 2121). In addition to joining with Mr. Spratt and Mr. Zelinski in interviewing the parties interested in the real estate transactions which have been spoken of as sales in the vicinity of the stockyards, I frequently went down there by myself through the various zones, paying particular attention to the uses that they were put to. As indicated in my direct testimony I went to Omaha, went across, made what you might say a cursory examination of the stockyards there just in passing, talked with the men, the two men who had appraised the Omaha stockyards property. Specifically referring to my appraisal of respondent's land, I can cover the work, other than that which I [fol. 1647] did in company with Mr. Spratt and Mr. Zelinski, by saying that I went down there myself frequently, and I do not know whether it is too comprehensive to say that I made my own (T. 2122) individual study, but that in a word is what I did do. I did not consult with Mr. Spratt relative to prices. We discussed the situation together much in the same manner as Mr. Spratt and I discussed it with Mr. Zelinski, but each of us arrived at our values unknown to the other and without consultation as to what the values should be. I might say in that connection that I know that Mr. Spratt was extremely conscientious in that. I tried to be myself, and I think I succeeded in being so, and I don't believe until we had finally compiled our report that either one of us had any idea of what the other's values were to be.

The larger portion of my real estate business has been composed of buying and selling and renting real estate as agent for others. I have dealt in very little real estate on my own account, that is, very little in comparison with the bulk of our business (T. 2123). I have not developed any subdivision or anything of that kind on my own hook. I helped, of course, to sell subdivisions as agent for the owners who developed them.

I do not include in my land value the value of any structures that were either in the land or above the land. I would think that would have been a duplication of Mr. Kosters' work. The valuation that I put on Zone A and on the other zones was as of vacant land entirely. As to

whether I gave any weight in my valuation to the use that is being made of the land, I have not been able to distinguish between the terms weight and consideration. I do not know whether my interpretation of weight and consideration would be the same as yours (T. 2124), but I will say that I did give the use that the various zones were put to, and are being put to, consideration. I gave this sort of [fol. 1648] consideration to the fact that the various zones are being at the present time used. I looked at the land, to paraphrase Mr. Zelinski's explanation of it, so as to divorce my mind entirely, or at least as well as I could, from the fact that the zones were being put to some certain use and found my values with that in mind, then when I realize and understand and know and am entirely conscious of the fact that these zones are being used, very evidently have been profitably used over a long period of time, I find that in my mind (T. 2125) it tends to substantiate and corroborate the values that I put on the various zones that are being used. With reference to my statement that there is only one value to a given piece of land, there are in the minds of a number of people who deal in real estate a number of various kinds of values, there is the sentimental, the market value, and trading value, and so forth, and various values of that kind, and my idea of the true value must of necessity go back to the old, you might say shop worn, definition of value, which is the price that land, that property will bring from a man who does not have to buy, and owned by a man who does not have to sell. In other words, that value is what a willing seller would pay and what a willing buyer would give. I would say that really represents its market value, but not necessarily at the time the valuation is made. A willing buyer might very likely be able to see values that would accrue in the future and would be willing to pay more than (T. 2126) a piece of land would normally be expected to bring at a time like we are going through at present. I think what a willing seller would take and a willing buyer would give is a consideration that I can say I gave weight to. I stated on page 5 of Respondent's Exhibit No. 134, "In considering values of properties owned by the St. Joseph Stock [fol. 1649] Yards Company, it has been impossible to eliminate completely from mind conditions that obtain today in values of every known commodity. Nor is it my intention

to entirely divorce from mind proper consideration of these conditions with which we are confronted. Rather has it been my intent, in so far as it is possible to explain one's mental processes, to recognize the fact that the conditions have a direct bearing on values and to properly recognize these elements without being overly influenced or placing undue emphasis on so-called forced or distress sales, foreclosures, and so forth, that may have occurred in the immediate vicinity of the property being considered." Then I say in the next paragraph, "Neither have I stressed or been solely guided by sales made in vicinities contiguous to stockyards properties that are obviously higher in unit values than could be obtained on today's market" (T. 2127). I tried to keep in mind the fact that the whole country is in what we might call a stagnant condition now and that it would be almost impossible to sell anything now at most any price, and my values represent an idea of the rule of the willing seller and the willing buyer under reasonably normal conditions (T. 2128).

By going-concern value, referred to in my direct examination, I mean the value that would inhere to a piece of property for the reason that it was occupied and being put to use by an organization of some kind or other.

None of the zones of respondent's land which lie outside the ring of the Belt Railroad compare with the zones which lie within the ring of the Belt Railroad as to adaptability for stockyard uses. I would say that all those outside the ring would need considerable in the way of filling and work of different kinds before they would become adaptable in the degree that those within the ring are adaptable. In making my valuations of zones outside of the ring of the Belt Railroad and west of the Trunk Line Railroad, I gave [fol. 1650] such weight to the adaptability of those zones for stockyard uses as I thought in my mind they were entitled to (T. 2130). As to the weight I gave on account of adaptability for stockyard uses to all lettered zones other than A, B, E, and D, I gave them the weight I thought they were entitled to for availability for stockyard purposes as well as any other purposes to which they might be put (T. 2131). I gave some little weight on account of adaptability for stockyard uses to Zones F and C, and very little to any of the others, very small weight to Zone N, and as to the zones that lie south and west of Zone A, very small weight

or even consideration. By my statement on direct examination that I gave no consideration to a theoretical multiplier, due to acquisition or condemnation cost, I mean that I applied no specific percentage nor no specific figures to the values of the properties for the reason that they represented an assembled tract readily available, and part of it being used for stockyard purposes.

With reference to the 147 real estate transfers which were investigated by Mr. Spratt, Mr. Zelinski, and myself, I do not believe I could single out one transfer or sale and say that I gave it more weight than all of the others or any of the others (T. 2132). The transfers that have occurred and which we inspected, reviewed in the vicinity of Illinois Avenue and Cherokee Street, and some of these back in the neighborhood of Zone N, I would say that I gave as a group those that I have mentioned perhaps a great deal more weight and consideration than those, for example, to the north of Cherokee Street, and to the few we looked into south of Illinois Avenue. As to whether I gave any particular transfers more weight in arriving at my value of Zone A than I gave to transfers generally, I would say that [fol. 1651] *that* I considered as being in a degree similar, the sales of the land, of various transfers in the neighborhood of Cherokee and Illinois, and probably gave them more consideration and more weight than some of those that are more remotely removed from that particular area, either to the north or to the south.

Referring to supplemental map No. 3, in Government Exhibit No. 128, the transfers to which I have just referred as being those to which I gave more particular weight in determining the value of Zone A are 35, 38, 41, 39, 40, 91, 42, 43, 44, 50, 48, 49, and 46 (T. 2133), and included in that group, of course, is the Belt sale, which is sale No. 55. I gave to the various leases which preceded that sale, one of which is listed as sale No. 54, perhaps somewhat the same weight and consideration that was given the actual sale itself. I did not give the sale by which the St. Joseph Stock Yards Company transferred the capital stock of the St. Joseph Belt Railway Company to an outside interest any consideration at all (T. 2134) because I knew nothing about it. After I had made the studies which I regarded as necessary and was ready to make up my mind as to the value of Zone A, I did not do so by the use of any approved

mathematical formula. As to any explanation I can give as to why I reached 35 cents per square foot rather than, let us say, 30 cents or 40 cents, that would be to take you back through the processes that went on in my mind in determining that value. It would be an extremely difficult task and I do not know that I could do it. I took the sales as we investigated them. We did our best to learn the different conditions that attended each and every one of them, especially those that were applicable or, we felt, in any way influenced or were influenced by values in the stockyards; and I tried to paint a picture in my mind of the [fol. 1652] situation as it existed, and would determine almost, one by one, what the values were in the neighborhood, how they should be applied to the value of the ground in Zone A, or any of the other zones, as far as that is concerned, and finally determined that 35 cents was, in my opinion, as it referred to that particular zone, a fair price. Now, while it probably does not come within the scope of your question, I could be more specific, I think, in Zones G, H, and I (T. 2135). The ground in those zones is contiguous to Kirschner's Addition. It is much the same character of ground, served by the same facilities, as far as roads and rail service is concerned, and in that case, I found it rather an easy job to transplant the values that actually were shown in transfers in that division over into those zones. In the other zones, of course, it was, for me at least, much more difficult to do that. To the extent that I could do it, I did it for the other zones.

During my studies of the matter I read some of the testimony in the previous hearing in this case as to land value. I read the testimony of Government witness Mr. Walter Mack, and also that of Mr. Spratt and Mr. F. M. Atkinson. I read both the abstract and the transcript of testimony. I think it appeared in Mr. Mack's testimony that he placed in 1929 a value of 35 cents per square foot on Zone A, and Mr. Spratt and Mr. Atkinson put a value of 30 cents a square foot on the same zone (T. 2136). I do not believe that those appraisals had any influence at all on the value that I placed on the land in 1932. I suspect that if I were to be influenced and thought those values to be correct at that time, that my valuations would probably have been lower than they are at the present. Generally it is true that land values are actually lower now than

they were in 1929. Without any reference to Mr. Mack's or [fol. 1653] Mr. Spratt's testimony, I would think that the true value of Zone A today is less than its true value in 1929. As to the reasons which led me to the conclusion that Zone A was worth 20 cents per square foot more than Zone B, I do not know that I can recount all of them, but I would say that availability, or rather accessibility, is perhaps better in Zone A, and I have found it difficult to get away from the fact that people, and the assembling of people, the gathering of people, have a tendency to create values, and certainly in Zone A that is one factor (T. 2137) that probably is accountable for the difference of 20 cents, as much, probably as great a factor as any that I can think of at the present time (T. 2138). The things that occasion the assembly of people in Zone A are trading, people bringing stock to the market, purchasing stock, employees of the Stock Yards Company, the commission firms, and employees of packing houses who find it necessary several times a day to use the streets that are within the confines of Zone A. The assembly of people is on Illinois Avenue and to a lesser extent on Packers Avenue. Zone B, of course, has a degree of remoteness from the center of activities. It is much in the same position that a store in the retail district would be in around the corner from a so-called 100 per cent location.

With reference to that part of Packers Avenue adjacent to the land of the Hammond Packing Company, now operated by Armour & Company, I considered it a part of Zone A, and I felt that the fact that the streets are privately owned is one of the most valuable elements in that zone (T. 2139). I considered that street as a necessary part of the tract as it was zoned, for the reasons that it admitted of access to the Armour plant and helped to complete the picture as presented by that particular zone.

I have never had any experience in the actual operation [fol. 1654] of a stockyard. The closest I ever came to being employed in a stockyard was as a clerk in a stockyard bank as a youngster here in St. Joseph. That had nothing at all to do with the operation of a stockyard. I have never purchased any land for a stockyard, and this is the only stockyard land I have ever appraised. I have never sold any land for stockyard purposes (T. 2140).

I understand that there has been some falling off in the receipts of livestock at the St. Joseph Stock Yards in 1932 and 1931 as compared with the preceding years of 1928, 1929, and 1930. I gave that consideration in my valuation but no weight. I do not give weight to the intensity of use in the valuing of land, only to the extent already explained: My idea in this case was to reach what I thought a fair market value (T. 2141). If I were employed by one purchaser who intended to purchase a tract of land, and in another instance I was employed in a condemnation case to tell the court the fair value of a different tract of land, and in a third instance I was employed in a rate case to tell a commission or secretary or whoever was in control the fair value of the land, in the last two named cases my findings would probably be identical. In the first instance I would try to buy the land as cheaply as possible and suggest to my employer that he sho[illegible]so (T. 2142). If a client came in and wanted an a praisal on a piece of ground, whether it be ground that is subject to condemnation or ground such as this is or a ground that he intended to purchase, and came in and asked for a valuation on it, I would do my best to find exactly the same kind of a valuation in each and every case. That is my construction of only one kind of land value. The statement on page 4 of Respondent's Exhibit No. 134 that there is 18-minutes street car service every 7½ minutes means that it takes 18 minutes to go from 5th and Edmond to Illinois Avenue and [fol. 1655] Lake Avenue, and there is a car on an average of every 7½ minutes (T. 2143). As I remember it, the 7½ minutes' service is maintained for 18 hours during the day (T. 2144).

Redirect examination:

By my statement that I made an individual study of respondent's property, I mean I took into consideration the availability of it, to different utilities, street car, rail service, bus service, vehicular traffic, topography of the ground, and conditions of that character, its proximity to the packing house which it serves (T. 2144). By different utilities. I included sewers. In that connection I considered this property and compared it with each and every one of the transfers.

In my cross examination respecting depressed conditions existing at the present time, I did not mean to say that there is no sale of any kind possible at the present time for this property. That would not be true because at the present moment in the vicinity of Zone A I am negotiating a lease that will return the investor a 6 per cent net income on a value of something over $1.00 a square foot (T. 2145).

Assuming that going concern value means the value over and above the bare bones of the company, the term "bare bones," includes land value plus the value of the physical property and working capital, I did not include going concern value in my land valuation. If going concern value means the value of the business which respondent has, I did not include going concern value in my appraisal.

I stated that Zones F, C and N had some adaptability or availability for stockyards use. These zones have this adaptability or availability in a degree individually, but [fol. 1656]. also certainly in a varying degree with the zones within the Belt. By that I mean the availability or adaptability would be greater if they were used in connection with the zones within the Belt (T. 2146). If a stockyards were built on Zone N for example and had no connection with other stockyards to the south, it would not be such a good site. If the entire stockyards were to grow so as to require Zone N in connection with the land to the south thereof the adaptability would increase and likewise the availability.

I did not apply any multiplier to increase the value of Zone A for any purpose whatsoever.

In listing the transfers to which I gave weight in connection with Zone A, I intended to include the leases to the Shell Oil Company and the Painter Oil Company and also the leases (T. 2147) to Feuquay and the lease to Pearson (T. 2148). In considering transfers, comparisons of all kinds are necessary, such as the availability to utilities of all kinds, accessibility by roads, topography of the ground, rail facilities or trackage, highway facilities, and the character of the surroundings (T. 2149).

I did not make any appraisal of respondent's property in 1929. In making my present appraisal I did not find the value of that property in 1929. The statement I made that

values in 1932 are lower than in 1929 was merely a generality in conformity with the lower level of values in every commodity.

As to the difference between the appraised values of Zones A and B, I understand that the level of Zone A is generally from two to three feet higher than Zone B and that is one of the things I took into consideration in valuing Zone B as compared to Zone A (T. 2150). My value for Zone A is an average value for the entire zone. At the [fol. 1657] north end of it there is a tract that probably would not be, in my opinion, worth what the average value of 35 cents is. The same thing is true at the south end, including that portion there at the west end that lies, including along Packers Avenue just across the street, east from the portion marked "Nelson Morris and Company," and that would apply also to the streets that are remote from the center, such as the north and south ends of Packers Avenue, for example. There are certain portions of the zone that would be much higher which would be in the neighborhood of Illinois and Packers Avenues and would run generally from that corner east on Illinois Avenue to the Belt Railway Company's tracks and on Packers Avenue north from that corner (T. 2151). It is usual to find in various types of property sharp breaks in values from where more or less peak values exist. That might be shown by values that exist on a main business street. A very decided break occurs the moment you get around the corner, in most cases, from the main artery or the main business street. Shops and stores on side streets usually do not bring near the income, do not produce near the rent that those on the main street would (T. 2152). One also finds similar breaks where a street is used for business purposes and the next street east or west is used for residential purposes. Very much the same thing is true with varying residential districts (T. 2153).

Recross-examination:

Referring to the tract which I stated on cross examination for which I was negotiating a lease, the capitalized value of the rental being in excess of $1.00 a square foot, that tract is part of lots 13 and 14 in block 8, South St. Joseph Town Company's Second Addition, being the south-

[fol. 1658] west corner of Lake and Illinois Avenues, 65 feet on Illinois Avenue and 99 feet on Lake Avenue. A part of the corner is unimproved. There is a little building on the west side of the lot facing Illinois Avenue. Verbal agreements have been reached as to the rental price by the proposed lessor and lessee (T. 2156) and representatives of the lessor and lessee have agreed to pass their recommendation to the principals but the principals have not agreed upon it. By representatives I mean employees who are in a position to do things for the principals. The use of the building does not in any way enter into the rental that is to be paid. The building is to be torn down. The annual rental to be paid is $600 and the site will be used for a filling station (T. 2157). Had this lease been in the position where it could have been considered at the time my opinions were being formed I suppose that I would have given it some consideration and some weight. In many respects there is a degree of comparability between this land and the land being valued. It is comparable in the same respect that would make the corner of Illinois and Packers Avenues very desirable from a standpoint of an oil company occupying it for a filling station. I don't know whether Zone A could be sold for filling stations or not. It could as far as the oil companies are concerned. By that I do not mean that oil companies would be willing to buy the entire Zone A for the purpose of erecting filling stations (T. 2158).

Used and Useful Property

FRANK C. BLACK, a witness called by the respondent, being first duly sworn, testified in substance as follows:

Direct-examination:

I live in St. Joseph and am superintendent of the St. Joseph Stock Yards Company. I am the same person who [fol. 1659] testified in the former hearing and hold the same position now I held then, having been continuously so employed since the prior hearing.

By reason of my position as superintendent of respondent I have knowledge of the use which is made by respond-

ent of the various parcels of land and property owned by it (T. 2159). I am the same Mr. Black referred to by Mr. Christensen from time to time. My operations extend to the general office of respondent only in a small degree. Other than the manager I have no superior in respect to the physical operations of respondent exclusive of the work done in the general office. I am responsible for all of the so-called yard operations of respondent, which include all the operations necessary in conducting the business of a public stockyards. The employees that work out in the yards work immediately under me. I spend considerably over half of my time actually out in the yards going about the various facilities (T. 2160). In addition to my knowledge of the various parcels of land and property of respondent, I have made a particular investigation to determine the use and extent of such use made of each particular portion of the land and property of respondent. I have in my possession maps of the entire stockyards property, also other detail maps showing the areas occupied by the various structures. From these maps I labeled and scaled the areas occupied by the various structures and determined the use to which the property is put. The scaling of those maps was supplemented in case of doubt by actual investigations made by me or under my direct supervision. At the time of the prior hearing respondent employed an engineer but does not at the present time which has made some difference in the scope of my duties (T. 2161). I now perform some of the engineering services which Mr. Kosters formerly performed, although I am not [fols. 1660-1689] an engineer. I have acquired certain knowledge which enables me to perform certain of these services. When it is necessary to call upon technical assistants I do so. In such cases I work in conjunction with such technical experts, cooperating with them.

[fol. 1690] **Feedlots**

Referring to the statement on page 379 of the transcript where Mr. Christensen stated it was his understanding that respondent does not charge yardage on direct shipments if they are driven direct to the feed yards, and his further statement that he thought Mr. Black told him that, I did not make such a statement to Mr. Christensen. If I did

it would not have been a true statement of the facts. While that is primarily an accounting matter, still it has always been my understanding that the feedlots pay yardage on direct consignments. I would not tell anyone to the contrary because that is my understanding. In reference to the statement on page 384 that these feedlots are not used for sales purposes and that Mr. Christensen recollected I told him so, that is not a true statement, because I do [fols. 1691–1716] know that, particularly in regard to sheep (T. 2226), that practically all the sheep are actually sold in the feedlots. They are not sold any different than they are in the sales division. They are sorted and handled in exactly the same way as though the packer buyer were in the sales division buying and purchasing sheep. By that I mean they are sorted, graded, and chalked as if in the sales division. They agree on the price. They agree on the specific animals to be sold. That is the purpose of chalking, which means that the buyer by marking a chalk mark on the animal states he will take that specific animal (T. 2227).

[fols. 1717-1721] Baby Beef and Pig Club

The Baby Beef and Pig Club Show takes place at the same time. It is really one show. It lasts three days but the stock is here about a week from the time it arrives until it is disposed of. It brings revenue to the Stock Yards Company. The animals pay yardage over there the same as other animals (T. 2301). I do not know whether the revenue represents a fair return on the property used.

[fol. 1722] Sale of Feed

Animals that are trucked into the stockyards as a general practice eat less food per head than those arriving by rail. Mr. Gorman has made a study of this, which he will later introduce (T. 2316). The reason animals coming in by truck eat less feed as a general proposition than animals coming in by rail is because they have been in transit a considerably shorter period of time and, therefore, are not capable of taking such a fill as those with the longer haul. This study of Mr. Gorman indicates that trucked-in animals occasionally eat more alfalfa hay per head than rail ani-
[fols. 1723–1728] mals. That is because the animals ar-

riving by truck are practically all from nearby territory where they are fed alfalfa hay on the farm, and on arrival here are fed the same; whereas, the animals arriving by rail are principally from the grazing countries where alfalfa hay is not fed but to a very limited extent, and the animals are used to prairie hay and, consequently, they are fed prairie hay on arrival here. The rail animals eat practically no alfalfa hay, and with the truck animals, it is practicly the reverse. They usually eat alfalfa. In order to get the true comparison the volume of both would have to be considered (T. 2317). This should also be considered in connection with the per head receipts both by rail and truck.

[fols. 1729 & 1730] Feedlots

The sales of sheep take place in all feed lots in which sheep are fed. The packer buyer actually sorts the sheep and deals with the feeders as to the price that is to be paid, and the price is agreed on at the feed lot (T. 2334). If Swift's buyer would make a deal in the feed lot for sheep, the sheep would be driven to the stockyard and weighed, and the regular yardage would be assessed against the sheep. The sheep might go to the temporary holding pens, or they might not. Sometimes they would, and sometimes a portion of them would be driven direct to the killing plant. Again, they might all be driven direct to the killing plant.

[fol. 1731] C. F. Topping, a witness called by respondent, being first duly sworn, testified in substance as follows:

Direct examination:

I reside in St. Joseph and am president and general manager of respondent. I have been president for one year, but since January 1, 1930, I have been vice-president and general manager. For 20 years, I was secretary and treasurer of the Union Stockyards Company, Toronto, Limited, Toronto, Canada, and terminated my employment there on November 11, 1929, and came to St. Joseph, Missouri, preparatory to taking over the management of the St. Joseph Stock Yards Company my predecessor, Mr.

J. C. Barkley, retiring January 1, 1930, but because of the hearing in the proceeding before the Secretary of Agriculture, known as Docket No. 298, I came to St. Joseph about November 15, to familiarize myself with the matters [fol. 1732] involved in that hearing (T. 2339). Prior to coming here in 1929 I had looked over the yards several times and in 1927 was here for three weeks making an audit of respondent. As president and general manager of respondent, I am in active charge of all the operations of the company. I attended all the hearings held in St. Joseph in December, 1929, in this proceeding and at that time was familiar with conditions existing in and about the stockyards. I heard the testimony of J. O. Barkley at the previous hearing on the subject of used and useful property.

I am responsible for allocations of used and useful property which appear on Respondent's Exhibit No. 135 and also for the coloring on the maps which are attached to the appraisals of Messrs. Spratt and Quinn and which are respectively Respondent's Exhibit Nos. 132 and 134 (T. 2340). In general the position of respondent in respect to used and useful land has not changed since the prior hearing. Certain specific changes have developed, brought about either by changes in conditions or the fact that certain uses actually made of land in 1929 were not specifically mentioned.

Feedlots

I know the portion of Zone A which the Secretary allowed as used and useful and also the portion he excluded. One of those portions was the feedlot area. Since the prior hearing a change has occurred by the issuance of supplement No. 3 of the St. Joseph Stock Yards Company tariff No. 5, issued June 23, 1930, and effective July 7, 1930. The rates and charges applicable to the feedlot service were published and filed with the Secretary of Agriculture, which was contained in item No. 12 of that supplement. Effective the same date the tariff went into effect, all the [fol. 1733] leases (T. 2341) covering land leased to individual feeders were cancelled. A reissue of this tariff in supplement No. 6, effective March 24, 1931, changed the item to 12-A, but otherwise the item was not changed. Since July 7, 1930, this item of the tariff has been strictly

adhered to. The areas set forth on Respondent's Exhibit No. 135 correctly show the areas which respondent now needs to furnish feedlot services under the provisions to item 12-A of its tariff. I heard the testimony in the previous hearing as to the necessity on the part of respondent to furnish feedlot service. The situation in respect thereto has not changed. I am also a director of respondent and as president know and carry out the wishes of the directors (T. 2342). I know that the directors believe the furnishing of feedlot service is essential on the part of respondent as a part of its functions in furnishing a public livestock market. I have discussed this matter from time to time with various directors of the company. The feedlot area in Zone A was formerly used to handle receipts of cattle and calves in the southern cattle quarantine area. At that time it was intensively used. Respondent had nothing to do with the discontinuance of that use and if the Government still permitted ticky cattle to come to this market this division could still be used for that purpose (T. 2343). This is one of the instances where a facility was built for a particular purpose and dedicated to the public and put into useful service. After being intensely used for many years, through no fault of ours really, by Government regulation, this particular use was removed, and after some portion remained idle for some time, in anticipation of the possibility of having a similar use, we subsequently have put it to the best possible use that we could. I feel that once it is dedicated to public use, that it is used and useful property, and it continued to be used and useful property, even after the transporta-[fol. 1734] tion of ticky cattle was prohibited. I am of the opinion that there is a still further reason for including this property as used and useful property, in that the Stock Yards Company has been able to find another use of it meeting a pressing demand among the patrons and shippers to this market for a feeder outlet, furnishing feedlot services, thereby contributing to the welfare of the producers, the patrons of our market. The maintenance of these feedlots by respondent has contributed to the net earnings of respondent by making the market more attractive to the producers in that we have a better outlet for the thin or feeder end of the shipments from range or ranch territory, thus increasing the receipts of the Stock Yards

Company, and hence, the revenue to the Stock Yards Company from yardage and feed (T. 2344). As president I endeavor to get all the receipts I possibly can for respondent, adopting from time to time various methods of obtaining receipts. That is a part of my every-day duties. I think furnishing feedlots falls in that category. Livestock held in the various feedlots in all zones is held for the purpose of fattening and finishing for sale on the St. Joseph market. After being sold they may be either slaughtered here or shipped to other points for slaughter. The situation in respect to livestock held in these feedlots differs from livestock purchasd here and transported to country points where it is held by the owner for the following reasons: First, when held in our feedlots it is on the property of respondent and subject to its tariff charges which is not true if the livestock is taken to the country. Second, it is being held on property under the supervision (T. 2345) and control of the respondent. Third, this is a different feeding proposition from the ordinary country feeding, in that it is forced feeding and sheep and rarely held longer than [fol. 1735] 30 days for fattening while at the country points the feeding usually runs from 3 to 6 months. Because of transportation expenses, a feeder who desires to feed for only a short time can hardly afford to move livestock to any point, therefore, from the stockyards and back again for sale. This is really a transit arrangement for slaughter here or for shipment to other points for slaughter (T. 2346). Fourth, because the feedlots are physically a part of the stockyards here, they are readily accessible to local buyers and it is actually a fact that livestock is inspected, sorted into grades and purchased while on these feedlots. All the livestock so purchased is driven direct to the scales without first being yarded in the commission sales area, and after weighing, driven direct to either the packer holding pens or to the packing plant. On such sales we collect full yardage under the provisions of our tariff. Fifth, because those are physically a part of the stockyards practically all of the users of these facilities are individuals who operate on the St. Joseph market who supply an immediate outlet for small or large lots of feeders not suitable for slaughter and who in turn can put on the market on very short notice finished stock on days of light receipts, providing a satisfactory sales market

for thin stuff, and desirable average receipts for sale on the market.

The practice of railroads permitting feeding of livestock in transit on the premises of the railroads for a charge of 8½ cents is quite similar to the operation of feedlots by respondent. That practice is in vogue by railroads generally. I. C. C. Tariff No. 10,951 is a typical instance of such a practice by railroads (T. 2347).

Item 730-D of this tariff is Respondent's Exhibit No. 136 and provides in substance that for a charge of 8½ [fols. 1736-1750] cents per one hundred pounds, shipments of livestock may be stopped for not to exceed one year at certain designated points for feding and/or grazing and move at the through rate applicable from the point of origin to final destination.

The feedlots are facilities furnished in connection with the receiving, buying or selling, on a commission basis or otherwise, marketing, feeding, holding, delivering or handling of livestock in commerce. They are located at a place commonly known as the St. Joseph Stock Yards and are operated for profit as a public market. They consist of pens or other inclosures and their appurtenances in which live cattle and sheep are held or kept for shipment in commerce. The statements I have made on the subject of feedlots apply to all feedlots shown on page 1 of Respondent's Exhibit No. 135 in column 6 (T. 2350).

The next portion of Zone A which the Secretary excluded was an alley between the old Nichols and old Davis feedlots. It is now being used in connection with the feedlots and is useful in furnishing that service. What I have said in respect to feedlots would apply to this alley.

[fol. 1751] Anchor Serum Company

I heard the testimony of Mr. Barkley in connection with the Anchor Serum Company. I have the following additional reasons why the Anchor Serum Company should be included as used and useful property: This is the largest hog serum company in the world, and, in my opinion, there is some advertising value of the fact that it is located immediately adjacent to our hog yard. The chief reason, however, is the fact that I know that the Anchor Serum Company produces a substantial amount of revenue for the St. Joseph Stock Yards Company over and above the rental

which they pay. I prepared Respondent's Exhibit No. 139 which shows the details of this (T. 2380). These figures were taken from the books of the company and from information supplied by the Anchor Serum Company. Item 1 of Respondent's Exhibit No. 139, rentals, covers the rental of and land covered by the lease. For 1927 it was $380; 1928, 1929, 1930, 1931 and 1932, $428. Item No. 2 is the profit made by us on the sale of corn and other mill feeds to the Anchor Serum Company for the various years. This sale of feeds to the Anchor Serum Company is not to feed hogs in the yard, but is a direct sale to them of corn or feeds that were ground in our elevator for the Serum Company to feed hogs on their premises, and the figures shown represent purely the profit that is made on this transaction and if the lease to the Anchor Serum Company is an outside enterprise of the St. Joseph Stock Yards Company, certainly corn and other feeds sold to them for consumption on the leased premises is likewise an outside enterprise, and all such profits should be excluded from the operating income of the St. Joseph Stock Yards Company. This item totals for 1927 $335.14, 1928 $2,204.38, 1929 $2,167.34, 1930 $4,424.19, 1931 $7,207.40 and 1932 $3,768.02. [fol. 1752] Item 3-A represents the yardage earned on hogs purchased on the yards by the Anchor Serum Company at the St. Joseph market, and, in addition to the revenue that we receive from the activities of the Anchor Serum Company in purchasing hogs on that market, it is reflected in the additional competition in the buying and makes our market just that much more attractive to the producers. This item totals for 1927 $4,815.36, 1928 $4,922.88, 1929 $5,015.04, 1930 $5,114.88, 1931 $5,222.40, 1932 $5,283.84. Shippers of hogs to the St. Joseph Stock Yards are attracted by the outlet which the Anchor Serum Company supplies for a particular class of hogs at a premium. These are what they call serum hogs. The Anchor Serum Company is practically the only one at our market which is particularly interested in that class of hogs.

Item 3-B on Respondent's Exhibit No. 139 is the gain received from the sale of corn on hogs fed on the market. This feed is actually consumed in the pens of respondent. This item totals for 1927 $6,760.65, 1928 $6,695.60, 1929 $6,851.56, 1930 $6,919.69, 1931 $6,707.30 and 1932 $6,146.83. Item 3-C represents the expense incurred by respondent in

providing the service and feeds in items 3-A and 3-B. This item totals for 1927 $1,591.86, 1928 $1,586.52, 1929 $1,587.68, 1930 $1,582.41, 1931 $1,577.67, and 1932 $1,574.64.

Item 4-A is the revenue received from the use of the immunization plant by the Anchor Serum Company for each of the various years (T. 2382). Item 4-B is the expense connected with that immunization plant's service. The net revenue produced by subtracting 4-B from item 4-A is as follows: 1927 $145.04, 1928 $153.92, 1929 $144.30, 1930 $475.07, 1931 $1,636.20, and 1932 $738.00. In the last line I show the total net revenue received by respondent from [fols. 1753-1755] the activities of the Anchor Serum Company which is as follows: 1927 $6,028.97, 1928 $7,947.38, 1929 $8,055.52, 1930 $10,716.54, 1931 $14,453.23, and 1932 $9,558.21. If the land occupied by the Anchor Serum Company is excluded from the used and useful property all of these additional sources of income secured by us should be deducted. If these items were deducted if would show that respondent is getting excellent return from this tract of land. In fact it would be getting much greater than a fair return from the value of that particular tract (T. 2383). In my opinion, the fair proposition would be included the land as used and useful property. The management of the Stock Yards Company has seen fit to make the arrangement which exists with the Anchor Serum Company, and it feels, and the figures prove, that the arrangement is very profitable. The Stock Yards Company would be ahead if the property and the income were excluded, but I think the fairest way is to leave the situation as it is being managed by the officials of the Stock Yards Company. Furthermore, keeping the property in the classification of used and useful property would be helpful in case we retired that particular tract of land and desired to move the Anchor Serum Company to another tract, besides, it is more convenient and we believe more equitable to have the revenue accrue to the various departments of the yards, the same as revenues from other sources, and give them the advantage there is by arrangement with the Serum Company (T. 2384).

[fol. 1756] Zone 1

I am familiar with the use that is made of Zone 1. It is occupied by the hotel building providing meals and rooms

for the patrons of the yard. A smaller portion is occupied by a portion of the Journal Building. A portion is occupied by a private roadway, leading from Illinois Avenue to the rear of the Transit House and to the horse and mule division and a small portion of the horse and mule division lies in this zone. I heard the testimony offered at the pre-
[fol. 1757] vious hearing on the subject of the Transit House. The situation is practically the same now as at the time of the previous hearing. I heard the statement of Mr. Christensen that the patrons are chiefly commercial truckers. I investigated this statement and discovered that for the month of November, 1932, I found that 51.6 per cent of the total registrations were actual shippers, and for the month of December the percentage of actual shippers was 68.6 per cent, and for the month of January, 1933, the percentage of actual shippers was 56.6 (T. 2400). In my opinion the need for the maintenance of the Transit House by the management of respondent has continued. The Secretary allowed the Transit House as used and useful property and I believe that was proper. There has been no change in circumstances and conditions respecting the use of the Transit House since the prior hearing that would have any bearing whatsoever upon the change of classification from used and useful to non-used and useful.

Zone 2

The old horse and mule division is used for livestock feeding and fattening purposes. It is also used to house our 4-H Club Baby Beef and Pig Club Show. It is available occasionally for pure-bred and dispersal sales and also has been left in a position that it can be reverted to the use
[fol. 1758] of the horse and mule business, should that business revive sufficiently to warrant such use. What I have previously said about the feedlots would apply to the feeding service that is being rendered by respondent in Zones 1, 2, and 3. The charges for this service are covered by respondent's tariff. Referring to the question asked Mr. Christensen on page 373 of the transcript as to whether different feeders than Stevens and Williams had used the feedlot facilities in Zones 1, 2 and 3 (T. 2402), I know that there were other feeders besides Stevens and Williams that used these facilities. Those feeders paid directly to re-

spondent its published tariff charges for such facilities. That was during the year 1932.

Baby Beef and Pig Club Show

I consider this 4-H Club Show to be essential to the proper operation of respondent's stockyards. Livestock [fol. 1759] shows are considered a proper function and good business on the part of the Stock Yards Company in increasing the production of the right classes of livestock, giving encouragement to boys and girls and junior farmers to produce economical livestock, and, at the same time, familiarize themselves with the operations of the stockyards and the facilities for the disposal of their products. The Stock Yards Company benefits in that the production of better-grade livestock is more profitable, and encouragement of profitable production by the producer will react to our benefit, and also from the fact that he has become acquainted with our market, we feel that it is a good thing, in that when he has the livestock to market he will use our facilities. Practically all of the major stockyards maintain similar shows. A great many of them maintain elaborate facilities or show buildings exclusively for these shows. Compared to such facilities, our facilities are modest (T. 2405). If we did not have these facilities in the old horse and mule division, we would not have any place where a livestock show of this type could be held. We would either have to abandon the show or provide a building to handle it. Based upon my knowledge of the effect of these shows, in my opinion it would be advisable for the Stock Yards Company to provide a building under those circumstances, which would include some land. If such a building were provided, I would use my best efforts to keep it occupied during the other seasons. That is what I am actually doing in the horse and mule division at the present time. The Secretary of Agriculture supervises the 4-H Club Show through the Extension Division. It is also supervised by the State Colleges of Missouri, Kansas, Iowa, and Nebraska (T. 2406). I heard Mr. Black's statement as to the area and the buildings used in connection with the 4-H Club Show. He correctly stated the area and buildings. Three [fols. 1760-1766] to four hundred boys and girls come here annual-y for this show (T. 2407). As many as can get in

stay at the Transit House. We have a dinner for the boys and girls on the second night of the show at the Transit House. We charge these boys and girls yardage for the animals that are brought to the show at the regular published rate for the species. The animals are fed while here and respondent provides the feed, charging for it at its regular published rates. This yardage is performed and this feed fed in the facilities which were specifically stated by Mr. Black as being used in connection with this show. The animals are yarded in the buildings and fed in the space that is allotted to them (T. 2408). The open area is used in connection with going to and from these buildings and moving the animals. We also do some of the judging outside when the weather is fine, otherwise it is done inside. It is my understanding that the revenue by way of yardage and feed profit is included by Mr. Bachmann in Government Exhibit No. 124, page 2, as income, which he recommended be allowed to respondent in its gross operating income. The same situation is also true with respect to the figures he read into the record on page 1332 of the transcript for the year 1932.

[fol. 1767] Income for Rate-Making Purposes

Probable Future Receipts

I am familiar with the trend of receipts for the past six years. It has been downward in practically every instance, as indicated in our yearbook which is an exhibit in this proceeding. For the first month and a half of 1933 the receipts have fallen off from 1932 (T. 2423). Respondent has encountered additional competition since 1929. There has been more of a tendency for packers to buy hogs direct at country points, rather than at St. Joseph and other public markets. There has also been an increased tendency to buy stocker and feeder cattle and calves at intermediate country points, rather than at St. Joseph and other public markets. There has also been a tendency to buy this class of livestock direct at the ranches for shipment to feedlots without passing through public markets. I do not believe that this can be blamed on the depression because there [fols. 1768–1779] were substantial evidences of this tendency or these tendencies before the depression was felt. Based upon my experience and the facts to which I have

referred, I do not think we can reasonably anticipate an increase in receipts in 1933 over 1932. I think we will do well if 1933 receipts equal 1932. I do not believe an average of the receipts of 1927 to 1932, inclusive, would be fairly indicative of what we may expect in the next few years (T. 2424). In my opinion an average of the gross and net income of respondent for the years 1927 to 1932, inclusive, would not be a fair basis upon which to estimate respondent's net income for the next few years. I think I have already stated that we cannot reasonably anticipate an increase in receipts. In addition, there have been certain changes which we believe will have a permanent effect upon our net income, which will be stated by Mr. O'Malley in his testimony (T. 2425).

[fol. 1780] Cross-examination:

Traders and Speculators

Referring to Respondent's Exhibit No. 138, item No. 1, which is entitled "Yardage including the privilege of the market," and the statement: "Livestock resold in commission division, one-half the rail yardage rates additional will be collected," the one-half (T. 2445) yardage charge is imposed on all livestock sold in the stockyards when the actual sale is made to another buyer in the yards, except when it is bought to go to the country to feed. If a dealer or trader has purchased livestock in the yard, and resells it in the yard to another dealer or trader or to a packer or an order buyer or a commission firm, the dealer or trader who sells the livestock is required to pay a yardage charge regardless of whether the resale takes place in the commission division or the traders division. If livestock [fol. 1781] is sold in the commission division, that would be the first sale and we would collect full yardage like we do on all sales (T. 2446). If the trader "plants" some feeders in the commission man's pens who, acting for the trader, sells them to a country feeder, my understanding is that the Stock Yards Company would not collect yardage on that sale. The destination to the country for feeding relieves the sale of this re-yardage, no matter how it is sold to the country. I might amplify that by adding in supplement, that, of course, our idea in not charging the country shipment is to benefit the buyer that is going to feed it,

because we feel if the trader is going to have to pay half yardage, he would add that much to the sale price to the country buyer and it makes just that much more handicap to him in bringing them back to the market and reselling them (T. 2447).

Used and Useful Property

Feedlots

Referring to Respondent's Exhibit No. 138, Item No. 12 entitled "Feedlots and sheds," which item sets out the schedule of charges for the use of the feedlots, the charges there cover the entire feeding period. In the case of sheep that approximates 30 days. Hogs would run longer than that. I would estimate they would average probably 50 days. That is more or less of a guess. The same is true of cattle. Some of the cattle they just warm up, and don't keep very long; others they feed 50 to 100 days, so probably the average would be 50 to 60 days (T. 2448). I would not say that we had made a study to ascertain whether or not these charges return to respondent a fair return on the value of the property used in this feeding, after deducting all proper expenses (T. 2449). Without such a study I could not state definitely whether the charges [fol. 1782] actually do return respondent such a fair return. Off-hand, I would say they did not.

The old southern cattle division could be used right now if the shipment of ticky cattle in interstate commerce were again permitted. It would require some work in the way of running fences, putting in some water troughs that have been taken out, and chute pens would have to be rebuilt. For the purpose that we are now using the pens it was not desirable to keep them separate and we took out the gates first and then some of the fences in between, rather than repairing them and fixing them up. The deadline has been built over in places. There are some places where the deadline might be diverted to go some place else. It is not now intact. There would have to be some changes to make it work (T. 2450). In some places we would again have to make the deadline a vacant property. Maybe we could use an alley which is already vacant. If that was so, we could not then use it as an alley. I would not say that we anticipate the return of ticky cattle to the stockyards.

It is a possibility, but not probable. It is my understanding that ticky cattle ceased coming to St. Joseph because of an order of the Bureau of Animal Industry. I do not know the extent to which the receipts of ticky cattle had decreased at St. Joseph before that order was put into effect. As I understand it, I do not believe that the shipment of ticky cattle to St. Joseph had become a negligible quantity prior to the putting out of the order. It was some regulation about moving ticky cattle across Oklahoma that decreased it some toward the end, rather than the actual prohibition of the interstate movement of those cattle (T. 2451). I do not know whether the Oklahoma order was made by the State of Oklahoma or the Federal Government.

I think I made the statement that it was more economical [fol. 1783] for feeders to use the feedlots than it would be to take the animals away from respondent's property and feed them in other feedlots or yards owned by the feeders. By using respondent's feedlots the outbound movement expense and the inbound movement expense is saved, that is, the truck or freight charges. If someone were to acquire what is called the Fowler Estate to use for feedlot purposes, it would necessitate driving and a resultant shrink that they don't have just coming in from the feedlots right into the yards, where there would be practically no shrink. The driving of sheep, if it is only a mile, would result in quite a shrink (T. 2452). Coming in from the Fowler Estate might be about a mile by the time the sheep come around by the roads.

As to the number of sheep purchased at St. Joseph for feeding in the feedlots, I do not have any available figures and do not know how many it would be. The years vary considerably. In a ~~year like~~ 1932, I would say that it would be somewhere between 50,000 and 100,000, or it might be a little over 100,000. As to cattle, we know that all the cattle are bought at the St. Joseph market that are fed in this vicinity. I do not have the figures, but I presume they are easily available (T. 2453). All the hogs that are fed in the hog feeding facilities are bought in the St. Joseph Stock Yards. Some of them may be bred, and a few of them may have kept some sows and fed out the pigs. There were more hogs last year than for some years. Rockhold fed quite a few, but I don't know the numbers. Not all the sheep fed in the feedlots are bought in the stockyards.

As far as cattle and hogs are concerned, they are all bought in the yards. Sometimes when there are not a sufficient number of feeders on the market, they ship in a few feeder sheep.

Referring to the Fowler Estate, if they were to drive [fol. 1784] from that location they would have to come up to Lake Road down at the point where it joins what they call Diagonal Avenue, west and south of Armour & Company, follow Lake Road up to the St. Joseph Tannery Company and down around in behind the sheep house, and I fully believe that is a mile distance, possibly longer than that (T. 2454). I know it is two miles to a point which is slightly farther down Lake Road to our Exchange Building. There would be no way at the present time to get from the south end of Packers Avenue to Lake Road. It would be necessary to cross the St. Joseph Belt Railway, the Union Terminal Railway and the Missouri Pacific Railroad lines, and over property not owned by us. I would not regard it as practicable to provide such a drive when facilities are available a good deal closer and much more advantageous to the feeder. I have not made any investigation to determine what it would cost feeders to truck their livestock out to their own feedlots, which might be located on property other than respondent's (T. 2455).

I have read the testimony of Mr. J. O. Barkley, as it appears in the abstract of record of the last hearing. As to whether I agree with his testimony, I don't see anything on pages 241 and 242 that I particularly disagree with. The part that refers to feedlots being under lease, of course, is no longer true. There are no leases on these properties; it is worked under our tariff, under item 12-A, on a per head basis. I think some of the reasons for including the feedlot are apparent, in the five reasons that I gave, and adding to the point that Mr. Barkley has put in here as the reasons for using it. I have had the experience during the last three years added to the experience he had up to that time. I read the reasons which I gave into the record, and I think there are some there which Mr. Barkley did not give. The [fol. 1785] similarity to this operation and the (T. 2456) feeding at railroad points, the fact that it is physically a part of the yards, and the individuals who operate them operate on the yards,—I don't think he developed that point particularly,—are able to be on the market and in close

touch with the market, and, at the same time, carry on their business as a feeder in the adjacent feedlot, and, by reason of the proximity of the feedlots, put them on the market in almost an hour's notice which you could not do if you had to go and get trucks to get them here, and amplifying what we said a short time ago, not only the trucking expense, the sheep are hard to load and unload, and you get a shrink on the truck sheep that you would not have on the sheep if you drove them across the road into the yards and onto the scales, a fact that I do not think that Mr. Barkley developed to the extent that I have, and the fact that these sheep are actually bought on these feedlots, that the sorting is done over here and the buyer goes over there and agrees on the price. He also brought out the fact that the difference between this and the ordinary feeding is that it is what we call a forced feeding. They do not have the range to move around. They keep them more or less confined and feed them heavily, in order that they take on this fat rapidly. Mr. Barkley spoke several times about this land for expansion. We feel that, inasmuch as most of it had been used previously for stockyards purposes and dedicated to that purpose and is now being continued to be used for what we consider a useful stockyards purpose in providing an outlet for thin lambs and bringing fat lambs back onto the market, that, while it would be available for expansion, we do not (T. 2457) consider it as expansion land particularly. The land occupied by these feedlots is available for expansion, but inasmuch as it is being used, it is not necessary to [fol. 1786] consider it as expansion land. Inasmuch as we have other land for expansion, if we are going to be allowed land for expansion, which we think we should be, it is not necessary to develop these feedlots and the use they are being put, to call that expansion land. Mr. Barkley went apparently to some extent to develop what use could be put to Zone N, which I have not particularly developed at this time, in that it could be used for feedlot purposes. I do not think we are particularly claiming that land for feedlot purposes at this time. I think outside of that, as far as reading it hurriedly, I do not notice any other point. As to the similarity between these feedlots and the feed yards maintained by the railroads, these feedlots that are maintained by the railroads are yards at convenient points enroute from the ranch or the range to the killer, to finish fattening. And

they stop them there and they have the privilege of doing that and feeding them and going on at the same rate except 8½ cents per hundredweight charged for that privilege. Exactly the same (T. 2458) thing happens to us. The lambs come in en route to the killer, and they are unloaded as thin lambs, put in these pens for fattening, the privilege for which we charge 5 cents a head, and they are brought out and sold to the killer to kill. The same thing applies to cattle, of course, being on a hundredweight basis, the railroad rate compares with some of the charges we make (T. 2459). In rare occasions, hogs are fed simply as hogs. These are corn fed cattle and the hogs follow the cattle. That is primarily the reason that the hogs are in the feedlots, and there is some difference between sheep and cattle, but on the whole the reasons are practically the same for both. When I state that the feedlots are physically a part of the stockyards in reference to the feedlots on Zones 2 and 3, I do not think we ever considered that the horse department was not physically a part of the stockyards. It [fol. 1787] was built over there because that location at that time was desirable. It is still part of our facilities. I still regard that location as available for a horse barn, but at the present time it is used throughout the year by feeders. It has always been a part of the stockyards. The O'Connell feedlot on Zone B is also located on our land directly, yes, sir, that is being used as a stockyard. That is, for what Mr. Christensen called the stockyards. We still feel it is part of our yard. It is all within the Belt loop where all the marketing facilities outside of the horse barn takes place (T. 2460). The Rockhold feedlot on Zone C is about as close as you could get to the sheep house for those facilities and as primarily all sheep are fed there, I would say that is physically a part of the stockyards. The general idea in feeding sheep is that the more sheep can run around and exercise the less feed they will take on. I don't think my argument was that it would not be provided anywhere except that it is provided here. It is used here, because it is a forced feeding proposition. It may cost more money to put this fat on feeders, but they will do it in a shorter time and they can turn that over much faster. Cattle and hogs are not restrained to the same extent that the sheep are in these feedlots. Cattle are not prone to become

excited and move fast like sheep, as sheep are more excitable than cattle (T. 2461).

The Stock Yards Company rarely, almost never, I would say, supplies the feed consumed by the livestock in the feedlots. There are certain individuals and corporations who make a business of feeding in these feedlots. They do not monopolize the particular space assigned to them. There were several feeders who occupied the old horse barns during the past year. This was because the facilities in other places were filled and they came over there and used the [fol. 1788] facilities (T. 2462). During certain seasons the public generally brings sheep into these feedlots to feed. It is just a little confusing to say how many operators all told there are in the course of a year, because the operator occasionally feeds commercially for other people, and outside of the feeders that have been discussed a number of times, men come up here, particularly from New Mexico and Texas, with thin lambs which are fed mostly on a per ton basis by some of the feeding companies already established. When a feeder comes to market he has the option of selling his lambs as thin lambs or as feeders, or of taking them to one of the commercial feeders who fatten them out and sell them as fat lambs. In that event yardage is paid to the respondent, and as to who absorbs the charge depends a little on how long the lambs are fed (T. 2463). If a man, say from Texas, brings in lambs and makes a contract with Stevens and Williams to feed them, respondent would bill Stevens and Williams for the yardage charge. If the Texas man arrived at the yards with lambs to feed and none of the regular feeders would undertake the job of feeding for him, respondent would provide him with facilities in which to do his feeding. That would depend, of course, on having of facilities available. In our tariff we agree to supply the feeding facilities as far as they go. If we were filled up, we could not furnish them. By that I mean, if Stevens and Williams even over in their location had room, we would retain the privilege of putting the man in there. I might say, in getting back to a previous question of yours, you asked me who would pay the yardage, and I said likely Stevens and Williams. Primarily that is because all commission firms are under bond to us, and we would not want to be in position of having to look for the yardage to some fellow whom we (T. 2464) did not know very well, or who probably was

[fol. 1789] not financially good when we have a man that is on the other end of the contract that is under bond to us and he would pay the charge.

If a shipper brings sheep to the market and does not engage the services of the commission men, the stockyards would bill the shipper direct for the charges, but would not turn the livestock over to the packer until the charges were paid. It would not run any risk, because it had the livestock itself for security, and that is also true with respect to the feedlots. In the feedlots we would have to wait longer for our money (T. 2465). There may be some instances in which the Stock Yards Company supplied the feed for the animals in the feedlots, but I don't remember any offhand, and I don't know whether they would be charged regular scheduled rates or a special rate would be made.

If a man from Texas brought sheep up to be fed, they would first be unloaded at the regular unloading docks in Zone A and he would be charged yardage on those sheep the same as any other livestock unloaded in that zone. The sheep would be driven to the feedlot by the commission man or the feeder (T. 2466). The sheep would come down the east alley of the yard to a point about opposite the stockyards' office and then go across the railroad tracks along Illinois Avenue, assuming that they were going to the horse and mule division. After the sheep had been fed, the owner or his commission man would take buyers over to the feedlots and show them the sheep which were for sale. Of course, there is the option of taking them back to the commission pens for sale, but the fact is the sheep would not all get fat at one time and the owner would not take them all over to the yards at the same time, therefore, he would have the packer buyers inspect them at the feed yards, sort out [fol. 1790] the fat ones and leave the balance to finish feeding. The feeder or the commission man would drive them back to the stockyards' scales where they would be weighed to the purchaser (T. 2467). I might add to that, there are times when the packers help them, particularly on a morning if they were short and needed the stock very badly, I have seen the packer buyers assisting in getting them to the scales in order to expedite the handling so they can get them to kill. I think Swift is the only packer which feeds sheep in the feedlots. None of the packers feed cattle or hogs.

Swift and Company used a part of the barn immediately west of the south end of the sheep house until along in December, I think it was. Now they are using a part of the Rockhold facilities on Zone C. At one time during the past year Swift did some feeding in the old horse and mule division (T. 2468). Stevens and Williams, Rockhold Feeding Company, Swift and Company and Sinclair Feeding Company were all feeding there at the same time. But, ordinarily, they do not use that facility for their own feeding, except there are times when the other feeders feed for Swift on a per ton basis. In addition to Swift's own feeding lots, sometimes they have a contract with the feeder to feed some for them, as well. The lambs fed by Swift and Company comprised both thin lambs bought by Swift on the stockyards and also thin lambs bought elsewhere and shipped in. Primarily, Swift feeds to take care of the thin lambs purchased on the market, but there are times or seasons when the lambs come fat, when they are not getting as high a percentage of feeders, and in order to keep the facilities running evenly, they sometimes ship thin lambs from outside, too. The initial yardage charge on the thin lambs purchased by Swift and Company in the stockyards is paid by the person shipping them to St. Joseph. Then Swift & Com- [fol. 1791] pany drives the lambs to the feedlots (T. 2469) and Swift pays the feedlot charges that are scheduled. When the lambs are ready for slaughter Swift takes them back to the stockyards and has them weighed. Everything that the packing house uses is weighed alive and then the value is assessed on the killing weight, as compared to the live weight and the cost dead compared to the cost alive. Swift and Company pays the Stock Yards Company the regular yardage charges when they bring the lambs through the stockyards and have them weighed. The lambs brought by Swift and Company to St. Joseph for feeding are unloaded in the regular sales division (T. 2470), and Swift and Company pays the initial yardage charge on those so that two yardage charges, in addition to the feed charges, are collected on all sheep weighed by Swift and Company. I have found that is true from complaints made by Swift and Company on account of having to pay two yardage charges.

I noticed the testimony given by Mr. Barkley on cross-examination with respect to an illustration of the feeding

of sheep on a farm somewhere out in Buchanan County owned by the Stock Yards Company. I do not exactly agree with what Mr. Barkley said about that. With respect to a farm which the respondent might operate 4 or 5 miles out in Buchanan County and on which it permitted the feeding of sheep, identically in the same way physically, and for which it made the same charges as are made with respect to the feedlots, some of the reasons which I stated why the feedlots should be considered used and useful would not apply to that farm. As to the distinction I see between the farm and the nearby feedlots, the fact that the feedlots are nearby and the fact that they are adjacent and we consider it physically part of our yards is a big item. They are under our control. The fact that the feeder, himself, can stay on [fol. 1792] the market and look after his business at the feedlot which is immediately adjacent and go over and select lambs to be put on that particular market without that trucking or loading or shrinkage, makes a difference. It probably would not be quite as easy to get the packer buyers and other buyers to come out to the farm and negotiate for the sale of sheep as it would be to the feedlots. That is one reason why we included them. Actual sales are taking place there, they are inspected and graded and sold right on these premises. You could not expect the packer to go out in the country when buying; in fact, if the packer did that, we would be getting away from the stockyards. Of course, they might be shipping to other points (T. 2472). To a limited extent buyers do go quite a distance out to feed yards to buy. I am acquainted with the situation at Kansas City at the Morris and Prospect yards. That is a situation that we hope we are going to get stopped pretty quick. On my direct examination I stated that these feedlots were facilities commonly known as stockyards conducted or operated for compensation or profit as a public market and consisted of pens and other enclosures and their appurtenances in which live cattle, sheep and swine are received, held and kept for sale or shipment in commerce. I would say that the O'Connell feedlot in and of itself is commonly known as a stockyards (T. 2473). It is a yard to hold stock, and to make the term more descriptive I would say it would be a feed stockyards. I might call a farmer's feedlot a stockyard, but he probably would not bring anybody in there to buy, as is done presumably on a market. In its physical

aspects there is not a great deal of difference between the O'Connell feedlot and the farmer's feedlot. The O'Connell feedlot is better developed than lots of feed yards would be. On the other hand, I presume there are lots of farmers' feedlots that are well developed (T. 2474).

[fols. 1793-1807] The difference between a public market and a private market is the difference between the words "public" and "private" (T. 2475). It is my thought that when Stevens and Williams are feeding sheep in one of these horse barns, for instance, and selling them to packers, it is operated as a public market.. Assuming that Stevens and Williams were obtaining their livestock direct from the railroads and that no stockyards exist on Zone A and were feeding it in those barns and selling it to the packers, if more than one packer was going over there and buying stuff, I guess that could be classified as a market. I made no distinction between the sheep feedlots and the cattle feedlots in so far as being a public market is concerned. I regard them both as public markets.

[fol. 1808] I don't know as I can say exactly how we arrived at the scheduled rates for feeding livestock in the feedlots. We figured that that was about the basis that a charge like that ought to be made, and we also figured it would return to us as much or more than we used to get when we rented the facilities. I imagine that recently this rate has not brought in a return which is quite as much as it was under the leases. There are times, of course, when it amounts to more. It depends wholly upon the volume of livestock being fed.

Anchor Serum Company

The purpose of Respondent's Exhibit No. 139 is in connection with respondent's view that that part of Zone B occupied by the Anchor Serum Company should go into the rate base as used and useful property. The exhibit is to show that the use of that property by the Anchor Serum Company returns a compensatory net revenue to the stockyards (T. 2515). The last line on the exhibit entitled "Total Net Revenue," is intended to show that in each of the respective years that amount was realized over and above all operating costs. I have not made a computation to ascertain the percentage of return that represents of the fair value of the property, except that in our mind

we figured it would make a return in excess of what we considered a fair return. To start with, we figured the land used by the Anchor Serum Company, and not the leased land. As pointed out in my direct testimony and starting, for discussion, with the rate base, we would start on the basis of 7½ to 8 per cent suggested by the Secretary [fol. 1809] in the last hearing. This yields roughly 7½ per cent. It runs up and down.

The item numbered 1, that is, the first line, represents in each year the total rental paid in money by the Anchor Serum Company to the Stock Yards Company (T. 2516). Item 2, where the feed gain is shown, represents the feed sold directly to the Anchor Serum Company by respondent. That is the difference between the actual cost, including our expenses in connection with the handling of it and the actual money received from the Anchor Serum Company. It is what I would call the net gain on feed. The expenses incurred in connection with the handling of feed includes the labor, some machinery, depreciation on machinery, light, power, fire and explosion insurance, repairs, labor, and depreciation. In some instances the respondent merely grinds the feed for the Anchor Serum Company and charges them for the grinding expense. In other instances we buy it and charge them with the cost of it and in addition the grinding expense (T. 2517). The employees of the respondent who handle the feed do other work. This is almost a one-man plant. One man had always been there before we had this arrangement, and he still operates the plant himself, but we are able to get more with the arrangement we have had for grinding feed for Anchor Serum Company with no additional labor, although we charge labor against this operation. I refer to the feed grinding plant which we started in 1930. The corn handled in this plant never reaches the yard. It is handled in the elevator and from the elevator to the Anchor trucks. As to how we allocate the proportion of stockyards labor engaged in handling this particular corn, we must have charged the whole man's time down there to it (T. 2518). Our accountant made a test of the approximate time that he was using on the Anchor feed and put in a charge for it, and I [fol. 1810] think the figure was pretty near all his time. It is very rarely that we are rushed enough so that we have to maintain more than one man, and prior to this contract

we had one man there all the time. Up until this last year the corn came in by rail and was unloaded directly from the car into the elevator. Since then we have been buying truck corn and the trucker shovels it into the hopper of our elevator. This one man takes it out of the elevator and delivers it to the Anchor Serum Company. We did not distribute to this corn and milled feed any part of the salaries of management and office people. As far as expenses is concerned, we always had the expense of the elevator and a man has been there all the time. This is really gravy, as I would describe it to get an additional revenue. We would have the expense anyhow. We have been charging it, and it is sufficient for respondent, so that a normal charge could be made for it. It is not our theory that we maintain the elevator to supply corn to the stockyards and that any other corn that we can sell out of it is just that much profit. The theory is that the elevator has been there, was built, was operated, the same as it is now, that the one man supplied the feed at that time, and we have been able to find a remunerative outlet for some additional feed at a profit. That is one of the reasons that in setting up here that this part of Zone B should be included in used and useful, is that it is a profitable venture tied up to other stockyard operations. As to whether a charge of some part of the general overheads of the company should be made against the revenues derived, I did not think, in strict interpretation of the term, that you would not have to do that. You could do that and it still would be profitable, and we had it before in any case; this is one of the places that we pointed back to the Exchange Building, where it does not prove unprofitable to the [fol. 1811] shipper. This place, I believe, is a profitable venture at about the ordinary expense that we would have in supplying corn, which accrues to the shippers' benefit, including all our earnings from stockyard operation. If this service was maintained for the Anchor Serum Company alone, in ordinary years, I am sure it would be profitable (T. 2520). Item 3-A is the yardage paid in the respective years by the Anchor Serum Company to the respondent. That is mostly on hogs purchased by the Anchor Serum Company in the stockyards. This yardage is not paid by the Anchor Serum Company. I thought I made that clear in my direct testimony, the outlet that it gives for this

certain class of hogs is that we could not sell the serum hogs to anyone else but the Anchor Serum Company, that it accrues to us by reason of that company being on the market and able to purchase. They do not pay a yardage, it comes to us in the regular yardage channel. A serum hog is a hog that has been treated with serum. The Anchor Serum Company puts these hogs on feed. They feed only hogs that have been treated (T. 2521) and for them they pay a premium over the regular market on that account. The hogs have been treated before they are shipped in. The owner may have had that view in mind when he treats them. I don't know how they handle them. They are handled by certificates so that the Anchor knows they have been treated. The Anchor Serum Company goes further than purchasing all treated hogs that come to the St. Joseph Stock Yards. I think they are even out looking for them away from us. I presume this treatment is the ordinary inoculation of hogs that is done at the stockyards, but inoculating them in the yards would not do. They have to be treated some time prior to coming to the market in order to be in feeding condition (T. 2522). If a firm should buy some hogs at Kansas City and have them inoculated over [fol. 1812] there and keep them a certain length of time and ship them to St. Joseph, I presume they would be the kind of treated hogs I have been speaking about. I don't know what the regulations are. There may be some time between that inoculation and when they could sell them as tested. Anyone will purchase these treated hogs, but the Serum Company pays a premium, and that is why the commission men like to sell them. The amount of $5,283.84 stated under Item 3-A represents yardage paid by the respective shippers on hogs which were bought on respondent's yards by the Anchor Serum Company and on hogs that the Anchor Serum Company shipped in to us from other points on which they would pay yardage (T. 2523). This amount represents the gross revenue from yardage on those hogs.

In Item 3-C we have estimated the actual operating expense, without overhead, which covers that item, and also the 3-B item. The 3-B item, corn profit, differs from Item 2 in that Item 2 is corn taken out of our elevator by the Anchor Serum Company and fed on its own premises. Item 3-B is corn fed on the stockyard premises. That includes corn paid for by the original shipper and by the

Anchor Serum Company on some hogs fed in the yards (T. 2524). Item 3-B represents the difference between the actual cost of the corn and what we sold it for, what we call spread. Then, under Item 3-C is listed the operating expenses which we charge against the income Items 3-A and 3-B. The labor referred to under 3-C includes the loading and unloading, yarding, feeding, watering, handling, and caring for hogs in the sales division. That is figured on a time basis of what it takes to handle a given number of hogs. We knew the number of hogs in this case, so we allocated the labor applicable to this particular number of hogs. We took a percentage of the time of individual [fol. 1813] men that worked handling hogs (T. 2525). We have a basis of their salary, the time they spent in handling hogs and extend their salary over a period of time. For the same period of time we know the total number of hogs we handled, so we could figure proportionately what the labor is per hog. The labor is mostly yardmen. That includes unloading men, dock men, handlers, feeders, scalers, and everybody in connection with it. We figured the proportionate time these men worked on hogs. Mr. Black assisted in the preparation of this, knowing the time that each of these men put in on definite jobs. I don't think he attempted to split minutes when he knows the percentage of time because each of them have regular jobs and they go from this to that job. Some of these men have 100 per cent time in the hog house (T. 2526). It would be an estimate. Mr. Black keeps a record every day of what each man does with his time. I don't know whether he splits it out for each hour, but he could tell in a week approximately what a man would spend on each job. I think it is a pretty close estimate. There is some point that the foreman who corresponds to a night superintendent would have to have his time allocated between hogs, cattle and sheep. In this case, we charge ⅓ of his time to hogs. I do not think that Mr. Black keeps a record showing the proportion of each man's day spent working on each of the different species. I think his knowledge would allow him to allocate the time which he has done in this case. I would not think it would be necessary for him to allocate (T. 2527) from memory the time that a man spent in a year for hogs. His knowledge day by day of what each man does would give him an estimate without carrying it over the year, I imagine,

because outside of high or low periods his knowledge of this man's operations would be practically the same every [fol. 1814] day. An estimate was not made for each of the years. The same figure was used for each year. The estimate was made up based on 1932 and the same proportion of time was used for each of the six years (T. 2528). To get the amount of time per hog, I think we took an average week as to labor and an average week as to receipts of hogs in the statement and divided the time of that week devoted to hogs by the number of hogs handled in that week. I do not know whether it is averaged for a particular week or averaged for the whole period. Mr. Black prepared this statement for me. For all practical purposes it is as good an approximate basis as we could figure. I would not go so far as to say that I see no objection to the Secretary of Agriculture using such a basis in this case if he desires to allocate yard labor to the various functions. The exhibit is put into show the excessive earning that we feel that accrues through our earnings to the shipper for this facility, for the facility used by the Anchor, or at least, the figure used by the Anchor in this Zone B, (T. 2529) and I believe the exhibit is accurate enough to answer that purpose. It is the best we could make with the material. If the Secretary desired to allocate labor to functions for an exhibit of this kind, I would say the basis was accurate enough. If the number of head varies in the respective years, that would affect the accuracy of my method of allocation to some extent, but we have used the same figure for each year.

Casualty insurance premiums are easy to figure as it is a rate on labor paid, so all we need to take is the rate for that particular year and figure out the amount charged to labor to make a casualty insurance item (T. 2530). The number of hogs purchased by the Anchor Serum Company were approximately the same each year. They budget their purchases and shoot at a figure each year for each [fol. 1815] kind of hog. The variation in the amount of casualty insurance premiums in the different years is due to variation in the rate. We obtained from the Anchor Serum Company the total number of carloads purchased, and in making the charge for water, allocated according to the ratio which their purchases bear to our total receipts (T. 2531). We do not have any way of telling how much

water is used in the hog house or the sheep house or the cattle yard. We took our purchases of water for the month of September and applied the proportion that the Anchor Serum Company purchases of hogs bears to our total receipts of livestock. In that way we arrived at $183.92 (T. 2532), and that figure was used for each of the years prior to that year. Allocation of light was obtained in the same way. We obtained the total income from yardage and corn profit for 1932, as shown in Item 3-A and 3-B, amounting to $6,146.83, and deducted from that $1,574.64, which represented, in our opinion, the operating costs connected with that yardage and corn profit, and arrived at $4,572.19 as the profit of respondent from yardage and corn profit resulting from the Anchor Serum Company having provided that additional outlet. Our theory is that without that outlet that number of hogs would neither have been shipped or sold in our stockyards. We assume that the more outlet we get for hogs (T. 2533) the more receipts we will get, and this particular outlet taking care of a particular variety of hogs for which a premium was paid, produces an additional outlet we ordinarily would not have. That part of Respondent's Exhibit No. 139 covered by yardage and corn profit is based on the assumption that if the Anchor Serum Company were not operating here and supplying the additional outlet, our receipts of hogs would be less by the amount that the Anchor Serum Company purchased. This [fol. 1816] additional outlet we believe is the reason for getting the hogs in the first place (T. 2534).

The immunization plant service listed in Respondent's Exhibit No. 139 is the service of the immunization plant maintained by respondent. We have a regular fee for doing the work of immunizing, which is charged against the hogs. The item of $185 in each of the years would represent the number of hogs multiplied by the regular fee per hog. The same is true of vaccination where that item appears. I would not say exactly that the $185 was calculated for one year and then applied to each of the other years. I think I stated that on these hogs they have a budgeted number of each kind of hogs that they adhere to each year as closely as possible. They gave it to us, and this is the figure applied to that number of hogs for the years shown across the sheet. That is not true of the vaccination figures. We had the actual figures since the

start of that on our own books and that applies to exactly the figures that they paid us for (T. 2535). The number of hogs used by the Anchor Serum Company vary slightly during the different years. As a basis for calculating $185, we took the Anchor Serum Company's budget. That just applies to spraying and vaccination, and they used to do some of that themselves. Since 1931 we have been doing most of it and we get the actual figures on it. It is my opinion that if the Anchor Serum plant in Zone B be excluded from the rate base, it would affect the ability of the respondent in case it should so desire to move the Anchor Serum Company to another location and use that land for extension of respondent's pen areas (T. 2536). The matter is more practical than would be considered an argument, because we are constantly working with the Anchor Serum Company in an endeavor to have our relationships friendly and I think it is evidenced in this report that we [fol. 1817] have been able to profit by that pleasant relationship. We believe if this land was considered used and useful and we had that point to use in moving the Anchor Serum, which we may have to some day, it would be a great assistance to us in maintaining that pleasant relationship and profiting thereby, as we have been able to do in the past. Some of the buildings erected by the Anchor Serum Company are substantial and expensive in construction. I would not say that that would negative any immediate prospects of moving them. That is a risk that they take. They have no more understanding with us now than they had before they built the building (T. 2537). I think always the desire would be not to move them unless it was a necessity, but if it was a necessity, we could not let something like that stand in our way, and that would be one of the reasons that we would need or would like to have this argument that would assist us in doing that amicably and not have any destruction of the friendly relations we have with them now. I think I stated in my direct testimony that the statement by the Secretary in his order that this land is used and useful would give us an argument with the Anchor Serum Company if we should want to move them and they did not want to move, and we produced this exhibit to show that the Secretary could do that because we feel the land under the existing conditions is giving a fair return and it is available land and is really used and useful, in that it is returning to us a good, fair return.

I would not say that one could make up an exhibit exactly similar to Respondent's Exhibit No. 139, omitting the same costs that 139 omits and on that basis prove that respondent's cattle rates are returning a very high rate of return. I would not think so (T. 2538). The cattle rates and the hog rates and the sheep rates and all other sources of revenue we have, go to make the return that the Stock Yards [fols. 1818-1827] Company as such makes, and that you could not separate any part of that, reasonably separate it and say that it made a return, because one attracts the other and they are so interwoven that you could not separate them. This is an item that we feel can be, and inasmuch as the Secretary excluded it last time, that this can be shown to be returning to the company from excluded land a profit, and as we are willing and would like to have it included because we feel it does connect with our business, that is the reason for putting it in, that it either should be included or these items of revenue should be excluded. I don't think it would be fair and just for the Secretary of Agriculture if he took the cattle, hog, and sheep rates all together, to test the reasonableness of respondent's rates on a cost study exactly similar to the one I have prepared in Respondent's Exhibit No. 139. There are expenses that do accrue to those operations that probably have not been touched in here. We mentioned that as far as overheads and other things are concerned (T. 2539) but the exhibit we believe is accurate enough, indicative enough to show what we intended to show, that, by reason of the extension we have made of the revenue on a reasonable value for the land, it shows so high that we could still include lots of expenses that have not been included in this exhibit and make a fair return. As to whether it could be shown by any exhibit made on the same basis as Respondent's Exhibit No. 139 that any purchaser at the stockyards is rendering a large return to the stockyards as, for instance, the two packers, aside from any exhibit, I certainly am not one to discount the advantages of the packers to this market.

[fol. 1828] Transit House

I think respondent is obtaining for the Transit House all the rent that it can. There is an understanding between respondent and the operators of the Transit House provid-

ing that respondent will have the right to inspect the operator's books, and whenever business is such that the operator can pay more rent, the rent can be raised. That situation still obtains. The patronage, particularly as it applies to the patrons of the dining room, is not sufficient to warrant an increase in the rent. The entire income to the operator has not been such as I felt warranted increasing the rent. As to whether the rent now being received anywhere near pays the respondent the cost of maintaining the building, that depends on what you call maintenance (T. 2560). I do not think we spent that much in maintenance or anything of that sort, but taxes and depreciation and other items would more than eat up the rent (T. 2561), which is $1,200 a year. That would more than pay insurance and taxes. Respondent does not heat the Transit House. The heat comes from Swift & Company, and the cost of the steam is paid by the lessee of the hotel. I do not know offhand whether the rent of Transit House is sufficient to cover insurance, taxes, and the annual charge to depreciation. I do not have those figures available. There is need for a hotel owned by the Stock Yards Company in order to provide its patrons a decent, clean place where they may stay over night, which they may necessarily have to do, within reasonable proximity to the stockyard (T. 2562). The other hotels in St. Joseph are not reasonable in distance and not reasonable in price mostly for this class of patron. [fol. 1829] The ones that are reasonable as far as distance from the stockyard is concerned are not what I would call clean decent places. There are places where one can spend the night near the stockyard at relatively low prices, but not only the price is low but the place is very low. It is not my thought particularly that the Stock Yards Company should provide the shipper a high-quality place even though at a loss. It is my thought that this is a reasonable service to the shipper that should go to a decent shipper, which we hope they all are, that arrive at the yard during the night hours and desire a place to stay, until the market opens in the morning. As to why the shipper should not pay the operator of the hotel compensatory rates so that the operator can pay compensatory rent, I am not debating the hotel situation (T. 2563); but we know that other hotels in that vicinity have to do other things to make them pay, and it is that kind of competition that any hotel has to go

up against now-a-days. If they run a decent place, it is very hard to do so at the rates that are available in these times. I would say that possibly it is true to a very limited extent that the inclusion of the Transit House in the rate base would cost the general shippers to the stockyard, both those who do not patronize the Transit House as well as those who do, to have to help carry the Transit House through moneys paid as yardage charges and feed spread. As to why they should be called on to do that for the advantage of the particular shipper who comes to St: Joseph, the availability is there, demand is there; to an extent they do use the hotel in connection with our 4-H Club Show at a time when we get 300 children loose in that end of town, and it is particularly desirable that they have a place to stay that is under proper supervision, and I think there are a number of reasons why the hotel should be maintained for the shipper that wants to use it. We have other facil- [fol. 1830] ities that probably all of the shippers do not use, but still give service to the ones that can and do use them (T. 2564). In the event the Transit House were totally destroyed by fire and the insurance was collected, as to whether I would advise the directors to reproduce it as a hotel, I hope I never make such snap judgments as that to my directors. I would want to know a good deal more about it and think it over a good deal more than I would to just answer your hypothetical question at this time. I have given a good deal of thought to the hotel matter and the study necessary to determine whether or not it is a needful part of the stockyard, and as such we are claiming it as used and useful. If we did not have this hotel, it might mean we would provide that building, or provide something else of different construction or with a different layout altogether from what we have. That would be the study, I believe, if there is a need there. As to whether I would advise the duplication of the building as it stands today, I do not think any one would advise the duplication of a building that has been built for 30 years (T. 2565). I do not know whether I would advise a building as extensive as the present building. It might be built more to meet modern requirements. I do not necessarily mean modern conveniences, but modern construction and modern availability. As to whether I would recommend to the directors the expenditure for a hotel of a sum of money

equivalent to the cost of reproduction new less depreciation, as placed on this building by Mr. Kosters, and the fair value of the site, as testified to by Mr. Spratt, in order to produce a gross revenue to the stockyard of $1,200 a year (T. 2566), as the case is highly conjectural, as pointed out by counsel for respondent, it would only be a guess on my part, because you would have to consider all the facts, and [fol. 1831] the $1,200 rent is not the only consideration that we have (T. 2567). Without giving it more consideration than we have, the idea just being brought to us at this time, I would not say what we would do.

Horse and Mule Division

Referring to the pure-bred and dispersal sales, which I testified were held in the old horse and mule division, like other things they have been affected by the depression, and by the lack of a market for pure-bred stock at the present time, and there have not been many of them lately. There were two during 1932. The stockyard derived a small revenue from those sales. We charge a higher rate than the regular yardage charges. At one of the sales that we had last year, which I called a dispersal sale, the man went out of business and sold all of his stuff, not only animals but equipment. It was a pretty good-sized sale (T. 2568). Referring to horses and mules that come to the stockyard, the number is shown in the figures. Those are practically all fed en route to some other place; and the figures do not indicate anything as to the business at the stockyard. There have been very few horses and mules sold at the yards recently. At the present time we do not use any of the old horse and mule division for the sale of horses and mules although, as I mentioned in my direct examination, there were negotiations for the use of a part of it for that purpose. That has all been since the first of the year, so that there is nothing definite at the present time. Some cattle and some hogs, in addition to sheep, are fed in the old horse and mule barns. The cattle are fed in the south two barns on the west side (T. 2569). The north one of those two barns is available for sheep, and at times sheep are fed there.

Assuming that some item of property which once was [fols. 1832–1845] used for stockyard purposes, but that purpose has ceased entirely and the property is not being

used for anything, as to whether it is my view that the fact that it was once used for stockyard purposes makes it used and useful property, which is included in the rate base, I think that if a property has been dedicated where the company puts its funds into it (T. 2570) to use it for a definite stockyard purpose, figuring to get its money returned over a period of years, and a rate of return, that it should continue to be included in the rate base, even though the original use for which it was contemplated has discontinued. This may be offset by other enterprises that the company enters into or a facility it erects for a shipper that prove profitable, highly profitable, probably beyond its expectations, and the revenue from which will also go in the rate base.

[fol. 1846] Redirect examination:

Feedlots

I made no specific study to see if the feedlots yield a fair return on the value of the facilities so used. I think I said that if I guessed about it, I would probably say they do not. I had in mind the amount received directly by way of yardage under Item 12-A of the tariff, and not any of the indirect returns or intangible items which we feel make [fol. 1847] these feedlots beneficial to the yards as a whole. If I had included with the amount of direct revenue received under Item 12-A of the tariff, such additional items as the additional yardage we receive when livestock is actually resold in the feedlots, and the yardage we receive from animals that are drawn to this market by reason of the existence of the feedlots, I think I would change my answer, in that I believe with those added that they do pay a fair return (T. 2634). I have made no study of any other facility to see whether individually it earns a fair return. I do not think that respondent's facilities as a whole, under existing rates, yield a fair return. In fact, I know they do not. Many facilities, individually and of themselves, fail to earn any return at all. We get very little return from a scale individually, except we might weigh a car for a billed-through shipment, receiving $2.00 a car, or something like that. We get no direct income from a sewer. Our facilities as a whole are rendering stockyard services. The way we look at it is whether as a whole they yield a fair return (T. 2635). No feedlot has ever been established on the

Fowler Estate. I never heard of that being contemplated. If it did happen, that land would be used and useful for the operations of the independent operator. If he provided land for others to feed livestock at a designated charge per head, that land would be used and useful for the man who was running the feedlot. Such a feedlot would not be on stockyard property. It would not be operated by respondent as a public stockyards, or otherwise. Respondent would receive no revenue from it (T. 2636). Unless in the operation of that feedlot some connection were established with respondent or its business, that feedlot would not bring any business to respondent's yards. I am not relying upon Mr. Barkley's testimony, but on my own testimony. I stated I [fols. 1848 & 1849] agreed in general with Mr. Barkley's statements, which would be subject to specific differences as they appear.

The assignment of feeding facilities to feeders is no different than the assignment of sales pens to commission firms. I have mentioned several times that both are for the convenience of the Stock Yards Company (T. 2637). If any feeders have use for all of the facilities, they are allowed to use them, but as far as monopolizing them in keeping somebody else from feeding, that is not so. We are at liberty to put someone else in to feed as long as the facility is not being used. That is the same theory by which a commission man, as long as he has use and need for certain pens, will be allowed by respondent to continue to use those pens. We reserve the right at any time to exercise our judgment in either reallocating or restricting the use (T. 2638). I recall the statement by Mr. Black and mentioned the fact that it would be difficult to operate an orderly stockyards if there was not some allocation of facilities to users. The feedlots operated by respondent are public in that they are open to the public to feed, and the feeder is open to sell to whomsoever he likes. No restrictions whatsoever are placed upon people that can go to the feedlots and buy livestock from feeders, and if a feeder is responsible no restriction is placed upon the feeding of livestock in those facilities.

[fol. 1850] Anchor Serum Company

There was more than one purpose for preparing Respondent's Exhibit No. 139. In addition to showing the

revenue that we receive through the Anchor Serum activities, which in my opinion provides more than a (T. 2644) fair return for the land occupied by the Anchor Serum Company, it was also prepared with the idea of showing what this revenue is so that if the Secretary sees fit to exclude this land from used and useful property, this revenue should be deducted from the earnings of the company. Using the highest land value and the area actually used by the Anchor Serum Company, the return was about 21 per cent.

[fols. 1851-1863] Transit House

I am not the only one that has expressed an opinion that the Transit House is used and useful for stockyard purposes (T. 2647). Inasmuch as the Secretary allowed it in his previous order, I presume by so doing that he considered it used and useful. I would say that if the directors had not considered the Transit House was essential to the operations of respondent's stockyards, they would not have built the building in the first place. I know they considered it essential when they constructed it, and I know that they felt that way years before I ever came here.

[fol. 1864] Going Concern Value

L. R. Howson, a witness called by respondent, after being duly sworn, testified in substance as follows:

I live in Chicago and am a consulting engineer. I testified in the former hearing. Since that hearing my occupation has been substantially the same as it was at the time of that hearing. My work has followed the same general line, consisting of preliminary investigations, reports, design and construction of utilities, largely water supply and sewerage, and the appraisal of those utilities. Among the more important construction jobs, or reports, I would mention service on a board, and a member of a board of three engineers employed by the City of Cleveland with respect to the enlargement of its water supply, involving a program for the next 25 years, total expenditure of $60,000,000, of which $20,000,000 is planned to go forward shortly. The plans, specifications, and super-

vision of construction of intercepted sewers and treatment works for Racine (T. 2659), Wisconsin, at a total expenditure of $1,800,000, of which about one-half is now built. New water works pumping station for Racine at a cost [fol. 1865] of a half to three-quarter million dollars; intercepting sewers and sewerage treatment for Duluth, on which the first step, $750,000, is now under construction; intercepting sewer and sewerage treatment for Galesburg, Illinois, completed within the last couple of months at a total expenditure of about a million and a quarter dollars; preliminary report on enlarged water supply for Aberdeen, South Dakota; construction of facility plant additions at Ashland, Kentucky. I have just within the past three or four weeks been sanitary expert for the States of Michigan, Wisconsin, Arkansas, Pennsylvania, and New York in the rehearing of the Chicago Sanitary District of Lake Michigan Diversion Case, being a special commission appointed by the U. S. Supreme Court. Those are the more important reports and construction in the interim. I have made twelve or fifteen additional appraisals and have testified in most of them. Some of them are still in progress and testimony has not been given as yet (T. 2660). Those appraisals were pending before the Public Service Commission of Missouri in the Springfield, Mo., water case; the Illinois Commerce Commission in the Kankakee and Peoria Water Works matters; a master appointed by a three-judge court in the Vincennes, Indiana, case; a Federal district court in the Eldorado, Ill., case; before this Bureau in the Denver and Omaha Stockyards cases; before the I. C. C. in the Fort Worth Belt case; and possibly two or three others which I do not now recall. In all these proceedings I computed and testified as to the going value of the utility being valued. I followed the same method which I used in the computation presented in the former hearing in all of these proceedings with one exception which was an approximate valuation and in which I used a percentage basis.

I have been asked to compute the going value of re- [fol. 1866] spondent as of August 1, 1932 (T. 2661). I prepared Respondent's Exhibit No. 143 which represents my computation of the going value of respondent as of August 1, 1932. In making this computation I followed the same method used in my former computation in this

proceeding, which is Respondent's Exhibit No. 8, but the figures are different. I have read my testimony contained in the abstract of evidence of the former hearing. My direct testimony appears on pages 283 to 301 of the abstract and I have there set forth the method in the computation of going value as contained in Respondent's Exhibit No. 143. The additional investigation I made in preparing this exhibit consisted of visiting St. Joe to ascertain the facts relative to the business in the interim between the date of the former computation in 1929 and the end of 1932, and to secure familiarity with the business and any changes in the factors affecting it or affecting its recovery (T. 2662) that might have taken place in that interim. I also interviewed representatives of the company and also a number of livestock commission men, making inquiry as to the receipts, the factors affecting the receipts at the present time, and the factors which would have a bearing upon the rate of recovery of receipts in the reproduction of the yards and its business. I described this additional study in the first four pages of the exhibit. The figures on page 2 relating to receipts were obtained from respondent for the year 1932. The figures relating to interest during construction were secured from Mr. Kosters. The figures on pages 3 and 4 relating to income and operating expenses were obtained from Mr. O'Malley from the books of the company for the year 1932.

I made three computations of going value as set forth in Respondent's Exhibit No. 143 (T. 2663) and also made three additional approximate computations with different [fol. 1867] assumptions as to physical valuation. Based upon spot prices and values as of August 1, 1932, I made two computations set forth respectively in tables 2-A and 3-A on the one hand, and 2-B and 3-B on the other hand. To both of these computations table No. 1 applies. In other words, table No. 1, which is an estimate of the revenues and operating expenses during the recovery period is based upon the recovery of the receipts actually experienced at the yards during 1932, which is the equivalent of 38,973 cars. The two computations are both identical so far as the business is concerned. They differ from each other only in that the business and the computation is based upon two bases of physical plant value, and I included in that land, one being a land valuation as made by

Mr. Spratt and the computation embodied in tables 2-A and 3-A is based upon Mr. Spratt's figures, and the other expresses the figures of land value for 1932, as set up by Mr. Quinn. The details of that computation are set forth in tables 2-B and 3-B. As I stated earlier, both computations of the A and B are based upon the same business and revenues (T. 2664). I define spot prices as the prices prevailing as of the date of the inquiry which was August 1, 1932. I made a third computation based upon a total physical plant valuation of $3,500,000, an arbitrary figure, to determine what the going value with the actual 1932 business would be, based upon the total valuation. The going value of that computation was $358,000 or approximately 10 per cent of the total value including going value. I also made another approximate computation based upon a total valuation of $2,000,000. On the assumed physical plant value of $2,000,000 the going value computation was approximately $400,000 or approximately 22½ per cent of the physical value including lost interest, land, etc. (T. 2665). On page 7 of Respondent's Exhibit No. 143 the first summarization refers exclusively to the spot [fol. 1868] 1932 reproduction, the third and fourth paragraphs refer to the spot or any other basis, that is, they are stated in terms of income return and are, therefore, applicable to whatever value they may be applied to. The range set forth in the first paragraph on page 7, giving the minimum of $294,000 as going value for a total valuation of $5,000,000, is substantially the Quinn land appraisal shown on table B in which the total is shown as $4,988,000, or in round figures $5,000,000. Mr. Spratt's figures brought the going value intermediate between that $294,000 computed on Quinn's figure, and the arbitrary figure of approximately $3,500,000 for physical plant, which gave a going value of $358,000. My other computation based upon the $2,000,000 assumed valuation could also be added to the summarization in the first paragraph on page 7 (T. 2666). In fact, it is added in the third paragraph. In other words, the $2,000,000 total valuation is approximately that figure upon which the present income excess over operating cost is sufficient to yield 7½ per cent return plus 4 per cent for depreciation, which would yield a going value of approximately 22½ per cent of the physical plant value.

Depending upon the final value as fixed by the Secretary, the going value will range in approximately a straight line variation between the limits therein set forth of 22½ per cent for a minimum value of $2,000,000 and 6 per cent or $294,000 for a maximum value of $5,000,000.

Based upon average values and average business over the 6 years, 1927 to 1932, inclusive, I have made another computation of going value (T. 2667). That appears on page 6 of Respondent's Exhibit No. 143, and the three tables following headed respectively, 1-C, 2-C and 3-C. In method the computation is identical to the previous computations. It differs, however, in figures throughout. The [fol. 1869] business of the yards in 1932 was 38,973 cars, as compared to the average business for the past 6 years of 48,015 cars. The income per car and the operating expenses per car were also different in the year 1932 than they were in the average for the 6 years. This computation is based upon the average figures for the 6 years named throughout, both as to business income and operating expenses. The valuation of the physical plant used in this computation was furnished to me with respect to all structural items by Mr. Kosters of Stone and Webster, and the land valuation was made by Mr. Spratt, both being 6 years' average figures. On page 7, I have likewise summarized my conclusions as to the going value based upon the six-year average values and business. The second paragraph refers explicitly to this 6-year average period, and the third and fourth paragraphs are applicable in the same manner that they were applicable in the spot 1932 conditions. That shows the going value to be approximately 9 4/10 per cent of the physical plant value, when computed upon the average physical reproduction and the average business in that 6-year period or a going value of $472,644. I have abbreviated Respondent's Exhibit No. 143 very much with the idea that it would be supplemental to the previous exhibit, Respondent's Exhibit No. 8, filed in this proceeding. I have incorporated none of the general statements which appear in that exhibit, the present exhibit being confined to an application of the method to the existing conditions (T. 2669). If the previous exhibit had not already been of record, I, of course, would have embodied the same general principles in Respondent's Exhibit No. 143. For use in the present case, the tables ap-

pearing in Respondent's Exhibit No. 143 should take the place of tables appearing in Respondent's Exhibit No. 8. If the Secretary bases a prescription of rates for the [fol. 1870] future on a consideration of earnings over a period of six years, the computation of going value shown in tables 1-C, 2-C and 3-C immediately preceding page 7 of Respondent's Exhibit No. 143, should be used. It follows that he should also use average values for the items composing the physical plant for this reason, that to use values of physical plant as of one period and figures as to the income of another period, unless it be in the period of particular normalcy where there is no change in price levels or income during the range covered, cannot help but result in an answer that is misleading, and not a reflection of the actual conditions (T. 2670).

I have read the testimony of Walter L. Mack, William E. Spratt and Frank M. Atkinson, contained in the abstract of evidence of the former hearing. I have read paragraph 73 of the findings, conclusion and order entered in this proceeding by the Acting Secretary of Agriculture on July 20, 1931 (T. 2671). Neither of these three gentlemen included in their respective land appraisals any of the same elements of value included by me in my former computation of the going value of respondent. I have an opinion as to the correctness of the following statement appearing in paragraph 73 of said findings, conclusion and order of July 20, 1931: "It is very clear, from the record, that all of these appraisers included in their valuations the going concern elements inhering in the land, because of its integration in, and used as a part of a going, operating concern, namely, the stockyards" (T. 2672). My opinion is that the element of going value was not included. I have read the testimony of both direct and cross-examination of William E. Spratt and Theo. J. Quinn in the present hearing. I also read the exhibits which constituted their appraisal re- [fol. 1871] ports (T. 2674). Neither of these gentlemen included anything in their respective valuations which was included by me in any of the computations covered either by Respondent's Exhibit No. 143 or my testimony today. My computations and Respondent's Exhibit No. 143 contain no elements in the computation of going value which were included in the land value. There is no duplication

of elements of value in any respect whatsoever by Messrs. Spratt and Quinn on the one hand and me on the other (T. 2675).

Cross-examination:

A going concern is a property which through the process of time has been designed, constructed, operated, and financed into an income. I would not say that all concerns are going concerns. In discussing going concerns, I limit myself to utilities, because that is the phase in which I am qualified. I am not qualified in industrials. Any utility which is serving the public in a useful service, at costs which the public can afford to pay, and producing a service which has a future usefulness, is, in my opinion, a going concern, and has a going value. That would be regardless of whether the property were making profits at the particular moment of the investigation, assuming that that same property is under regulation, is performing a needed service (T. 2676) and can perform that service at rates which its takers can afford to pay, which gives the assurance of continuity. That would also be regardless of whether or not the utility has defaulted interest on its bonds and was still in default, if the service that it was supplying was a needed service that would have to be supplied by that utility or any other in case it went out of business, and the demand of the future were assured, and this utility could supply that demand at rates which the service could afford [fol. 1872] to pay. By "if the demand of the future was assured," I mean that value as a whole is dependent upon future usefulness. Expressed a little differently, I mean if there is such an assured demand that you are reasonably certain that the public will go on using the service of the utility and pay its rates. If forms of competition have sprung up which make it doubtful that the utility will go on being patronized by the public and the utility cannot make profits and is paying no interest on its bonds and that income cannot be increased and the service has become less than the value of the service to the user, I would say the elements of going value would substantially drop out (T. 2678), and assuming further that it has gone beyond the doubtful stage and that these facts are demonstrated rather than being in a position of doubt or undemonstrated

(T. 2679). Assuming you have an interurban trolley line which is operating. It is running its cars, some people still ride on it. However, it is unable to and was even before the depression, unable for a long period of time to pay its stockholders any dividends, its surpluses were used until they disappeared, and finally it came down to the point where it defaulted its bond interest, but it is still running and people are still riding on it, it still has an income, but nobody can be found who knows how to make it a business that will even pay interest on its bonds, that utility may or may not, under the situation outlined, possess the going concern element. It depends upon the future rather than the conditions of either the past or the present, unless the future has been exhausted. For instance, we have a number of illustrations of that kind. There occurs to me now the Chicago, North Shore and Milwaukee and the South Bend Electric, which are the high speed lines out of Chicago and also the Chicago, Aurora and Alton. I think all of them were in receivership for years, were re-[fol. 1873] organized, service improved, and so far as passenger traffic today is concerned the Chicago, North Shore and Milwaukee has a substantial monopoly between Chicago and Milwaukee, whereas ten years ago or even five years ago they were carrying a small percentage of the passengers and had been so carrying them for a period of nearly 20 years, during all of which time they were generally regarded as dead investments possibly, and usually referred to as poorly conceived. Whether the trolley line might, in so far as the line itself is concerned, have a going concern element in it would depend wholly on the conditions surrounding that trolley line further than you have stated them to me. That is, it would depend upon the future of that trolley line rather than its present condition, in my mind. If I were called upon to determine its going concern value right now, I would have to know something of the use and the development of plans to which the prospective investor might put it. For instance, if I were asked to report upon a going value of that electric line which you outline, I would have to know the future possibilities and potentialities which are in the mind of the prospective investor, so that I might advise him as to what that going value might be as well as to what it is under the present

conditions. I would want to advise him as to both if I was asked to. If a thousand people a year had been riding that trolley line, it would have an attached business to that extent. As to whether on the basis of the cost of recovery of attached business it would have a going concern value, I could not tell you without knowing the facts relative to the physical plant valuation and other items of going value under a spot condition where a property, as we will say, is operating at a deficit below operating charges, with no prospects of ever getting beyond that stage, no matter who was to reorganize it or what was to be done with it, that prop- [fol. 1874] erty is eventually going into the discard, and if I were to compute the value on that property, based upon that ultimate situation, and with the facts as stated here of operating at a loss, without any fixed charges, simply an operating loss, a condition that never could be changed, the going value, as I would compute it, would be negative rather than positive, and the road would have a junk value, which would be less than its cost of reproduction (T. 2682). I would employ for the computation of going value of the interurban line the same method I have employed here in computing the going value of the St. Joseph Stock Yards Company's business. If I assumed that the construction period or reproduction period of that trolley line were one year as I have assumed here, and if I assumed that the idleness or the use of each stage of that road for one year would lose its passengers today, and it would take five years in which to recover those thousand passengers per year, my computation would come out to a negative going concern value because it is earning less than the income credits and, therefore, the increments of going value in the various years will be negative, rather than positive, and the summation of them at the end of the five-year period would also be negative. The interest or the return which the starting property would be receiving in the form of a credit from lost interest during construction and from the interest on the unexpended bank balance during that year would be more than the revenues from operation, therefore, each year's increment to the going value would be negative, and the total would be negative, and the property would be worth less than the physical cost of reproduction (T. 2683). The net revenue of the company is one element and quite

a considerable element, simply demonstrating what everyone knows, that a business which produces no return is not [fol. 1875] worth much, if it has no possibility of ever producing a return, whereas, a business that does produce a return becomes increasingly attractive as the rate of return increases up to the point where, under regulation, the maximum is reached. In my opinion, going concern value is synonymous with going value. That is how I use it in my vocabulary, and it may be defined as the difference between the total value of a property with its construction, established business, demonstrated ability, and so forth. The excess of that total value over the value of the structural items, including their lands, in other words, the bare bones (T. 2684). When I say "value of structural items," I mean the cost of reproduction new less depreciation. That is the difference between the sum total of finally determined value and the depreciated valuation of the physical and structural items including land. When I used the term "value" in connection with my statements with respect to structures as being synonymous with the cost of reproduction new less depreciation, I personally think that cost of reproduction new less depreciation in most cases is the best index of value, and not necessarily the absolute; but, in this case, I think the cost of reproduction is the best indication of the value of the physical property and the cost of reproducing the business, which is what is done in this computation of going value, is comparably the proper and most illuminating method of computing the value of the business attached to that physical property (T. 2685). I do not think that the cost of reproduction new less depreciation of structural property is always the same as the value of such structural property. I think it is in practically all cases the best indication of value. Assuming that some person would decide to reproduce all the structures of the St. Joseph Stock Yards, but to reproduce them way out in the desert where [fol. 1876] there is no livestock, no packing plants, no railroads, no reason whatever for a stockyard, I would assume that the cost of reproduction of those structures would at least be as great as it would be to reproduce them where they are located, and they would be valueless. That is one of the exceptions which I indicated to the application of

the cost of reproduction method, because it places a utility service at a location and under conditions which have no future usefulness, no potential service to the public, and is, therefore, an ill-conceived venture and one in which in ascertaining the value, cost reproduction is not in itself a guide. As to what element or attribute of property converts cost of reproduction new into value, I believe that cost of reproduction new less accrued (T. 2686) depreciation is the best index of value, in all cases where the property is serving a useful need to the community, has developed that service fully and is performing it so satisfactorily that it is better than that same service could be supplied by others and at a cost, and I think character of service which insures the continuity of it for the future. Under those conditions, I believe that the cost of reproduction new less accrued depreciation is the best indication of value. The element which the stockyard in the desert lacks which renders its structures junk or worse and which is possessed by the St. Joseph Stock Yards which renders its structures worth the cost of reproduction new less depreciation is the ability to furnish service, the record of service successfully performed, the demonstrated ability to make that service worth its cost to those availing themselves of it, and the assurance that that service is necessary in this community for the future. That is not the going concern element. The cost of reproduction of physical structures inheres to this property independent of the going concern [fol. 1877] element. The going concern element is over and above that and is positive, whereas, with the desert illustration which you have given, the physical structures would not be worth their cost of reproduction, and the going value would be so negative that the results would indicate just what your (T. 2687) preface termed it, a "venture" so foolish that it probably would never be entered into. In my exhibit, which is Respondent's Exhibit No. 143, and referring to page 7 thereof, there are stated thereon 3 different values in dollars and then there are 2 other percentage variations. I regard each of those three values for which the figures are given as applicable and as being the going value under the conditions for which each one is respectively computed. That is the present going value. I have three different present going values for this business based upon different bases of business and physical valuation, each applicable to its own particular condition

(T. 2688). I stated that the Secretary should find the going value in a range between $294,000 and $358,000, assuming that he adopts as the basis of his final valuation figure here the cost of reproduction of the physical property at spot 1932 conditions and if he so does, he should also base the computation of going value upon the business prevailing in 1932, and if he were to come to a total valuation of approximately $5,000,000, the $294,000 computed for going value would be the correct figure under those conditions. If, however, using the same basis of physical valuation and earnings, that is, spot 1932, but coming to a total valuation of $3,850,000, the resulting going value in that case and the going value which I think should be used would be $358,000. Whether the amount of going concern value be $294,000 or $358,000, it is based on the same number of carloads of livestock or carload equivalents, namely, the number received in 1932 (T. 2689). The variation in the amount of going [fol. 1878] concern value from $294,000 to $358,000 would depend entirely upon the variation in the values found for the physical property. I think there is a very obvious relation between the values of physical property and the value of such going concern elements as may inhere in the business. For illustration: as between two businesses, each of which will produce, we will say, for illustration, $100,000 per year net revenue, but one of those involves an expenditure for physical construction of $2,000,000, and the other of $4,000,000, it is obvious that the venture which will earn $100,000 net on one-half as much an investment is worth more to an investor than is the one requiring the larger. In other words, the more return, up to the limit of fair return, under regulation, that a property can earn on a given investment, the more attractive it is to the investor, or expressed in dollars, the more the going value, which is the value of that created income. There are a number of ways which I know by which people have sought to ascertain the amount to be allowed for going concern value. I don't call the percentage way, that is, to take a certain per cent of the physical value and call that going concern value, a method (T. 2690). I call that an approximation derived for its foundation from computations made by real methods. In other words, simply grabbing a percentage out of the air, even though it may be an average of a lot of other allowances, I scarcely call a method. It is a con-

clusion derived from the application of other methods, I would say. I don't understand that arriving at the amount of going concern value by the use of the percentage way is a negation of what I said in explanation of the relationship of value to the going concern element in my explanation of the first paragraph on page 7; that is, if the percentage way recognizes in its application the difference between a good utility, a mediocre utility, and a poorly-[fol. 1879] conceived utility, so that the percentage adopted reflects that divergence of operating conditions and results, then, I think it is in conformity with what I said; but, applied blindly, as a general average of a percentage, resulting, say, from a large number of court or commission cases, without regard to the conditions surrounding each utility value, I think then it is not a negation but it is simply nothing more than an arithmetical average (T. 2691). The percentage method would always ascribe the greater going concern value to the business having the greater physical property values if you simply allowed a fixed percentage of going concern to every utility irrespective of conditions (T. 2692). Assuming the same percentage were used on two properties, otherwise exactly the same, the percentage application would give a higher going value for the extravagant property than would the comparative method which I used, unless the computation of the comparative method were adjusted to eradicate the extravagance. If the percentage method were used in connection with the values of the physical property of the St. Joseph Stock Yards, that would give an indication of the going concern value of that business within a range; that is, applied (T. 2693) purely as an average without respect to the particular property, it would, of course, be a general range. In other words, it would on its face assume that the St. Joe property was the average of all of these other properties on which these decisions have been handed down. I certainly would not attempt to state whether it is without full review and much fuller knowledge of the decisions and the properties to which they apply.

In computing the number of carload equivalents represented by drive-in stock, I think I used 25 cattle per car, 125 sheep, 70 hogs, and I think 25 horses and mules, and I think also 70 calves. I state on page 3 of Respondent's [fol. 1880] Exhibit No. 143: "In order to determine the

rate at which it would be practicable to recover the receipts of the stockyards upon the beginning of operations after the reconstruction period, I made inquiry from five of the best informed commission men, namely, Messrs. McKee, Davis, Austin, Baker and Shotwell, all of whom have been in the yards 25 years or more and who are, therefore, particularly well informed as to the factors affecting the receipts of stock at St. Joseph. I also inquired from Mr. Vant, Mr. Carroll and Mr. Topping, officials of the St. Joseph Stock Yards Company." Mr. Carroll and Mr. Vant are the same persons referred to on page 292 of the abstract. Mr. Topping has succeeded Mr. Barkley referred to on page 292 of the abstract. McKee, Davis, Austin, and Baker are the same persons referred to on page 299 of the abstract (T. 2695). Mr. Shotwell was not interviewed in connection with my former report. He is a sheep salesman for John Clay and Company. The method employed by me in preparing Respondent's Exhibit No. 143 is the same as the method pursued in the preparation of Respondent's Exhibit No. 8, and the general principles to which I testified at the former hearing, as shown in the abstract of record at pages 283 to 358, are as applicable now as they were then. The difference in conclusions now from those arrived at at the time of my former report and testimony results from the use of different figures because I used then the figures then applicable, and I am using now the figures which are now applicable (T. 2696). The description of Messrs. McKee, Davis, Austin and Baker contained on page 308 and Messrs. Vant and Carroll contained on page 310 of the abstract is as applicable today as it was then. I do not know whether Mr. Shotwell has ever had any experience in the operation of a stockyard. I do not think [fol. 1881] he has ever had any experience with or observed a stockyard going out of business temporarily and being rebuilt and then undertaking to recover it. I do not know whether he has ever had any experience along that line with any other kind of business (T. 2697). Mr. Topping has both managed and is managing this stockyard. I do not think he has ever had any experience along the line of seeing a stockyard or any other business temporarily suspend and then undertake to recover its business. It is still true that I have no personal familiarity with any data or experience of mankind upon the construction of a new stock-

yards under present conditions as large as the St. Joseph Stock Yards and the attraction of business to it (T. 2698). The statement appearing on page 311 of the abstract reading as follows: "When we have made estimates in the past and the property has been constructed and the actual cost developed, we always compare those things. That has all added very materially to my fund of useful information in making estimates for the future. I have had no such similar guiding star with respect to the recovering of stockyards receipts. I have never gone through a stockyards business reconstruction, nor has anyone else to my knowledge," is still true.

Redirect examination:

I recall a series of hypothetical questions dealing with utilities which had defaulted their bonds, had no earnings, one of which was a more or less defunct interurban line. Those facts in no way conform to the facts as I found them in respect to respondent (T. 2699). If the Secretary in determining the value of the physical property of respondent fixes that value at the cost of reproduction new less depreciation, he has not in that finding made any allowance to respondent for going value, because he has appraised, or [fol. 1882] he has valued the bare bones of the physical structure without valuing a business attached to them, and inherent in the property as a whole. If the Secretary finds the value of the physical plant of respondent, including land, to be $2,000,000, 10 per cent would not be a fair allowance for going value. I have actually computed the going value for such a valuation and it approximates $400,000 (T. 2700). Ten per cent is the most commonly used figure. Ten per cent would not be a fair allowance for going value on a valuation of $2,500,000. Approximately 17 per cent would be a fair allowance, of $360,000, based upon the 1932 spot earnings.

Recross-examination:

When I say that 17 per cent is a fair allowance on a physical plant of $2,500,000, I mean as applied to the property of the St. Joseph Stock Yards Company here and now and that the $2,500,000 was the total value, including the going value (T. 2701). I do not attach any importance whatever to the fact that the going value I would recom-

mend happens to be 17 per cent. The 17 per cent is working backwards. It is a deduction from a computation rather than a computation in itself. If I had worked backwards and the percentage happened to turn out 7 per cent, I would have said 7 per cent. The way I got the 17 per cent is that I made four computations on the spot basis, two of which are shown in my report in detail, and two others that were made for a wider range of value, and not carried to the refinement of those in my report. From those four computations, it is practicable to plot a curve showing the general relation between the excess above operating charges expressed in per cent of physical plant value platted as one ordinant against going value in physical plant of the other ordinant, the 17 per cent resulting from a scaling-off of that [fol. 1883] curve (T. 2702). I arrive at going concern value in a way which I believe to be the proper way, but it has nothing to do with the ascertainment of the percentages of the physical value. The percentages are deductions from the computation.

Referring to page 325 of the abstract and the paragraph which states: "My conclusion is based on the assumption of an average of 54,275 cars over the five-year future period, but I did not undertake to determine for any particular year. I am stating what a study of the past would indicate as the average for a five-year future period. So long as it averaged 54,275, no amount of fluctuation of any particular year would materially affect my computation, but if the five-year average were changed, it would affect my whole computation in proportion as the two figures vary," the five-year period used for the future in the former hearing was to begin in 1930 and end with the year 1934. Approximately two years of that period have yet to run (T. 2703). I think that in view of the past three depression years it would be quite unlikely that the receipts for that five-year period will average 54,275 cars.

Redirect examination:

In view of the past few years, it is also quite unlikely that the receipts for the balance of that five-year period will exceed the 1932 receipts. I found from my inquiries from those men at the yards who were, in my opinion, in

the best position to know, such a divergence of opinion that I made the computation on the two bases, on that account,—one, an average, and the other on the basis that the 1932 figures, correctly represent the figures for the future (T. 2704).

[fols. 1884-1886] M. J. O'Malley, a wit-ess called by respondent, being first duly sworn, testified in substance as follows:

Direct examination:

Working Capital

I am Secretary and Assistant Treasurer of the St. Joseph Stock Yards Company and testified in the prior hearing (T. 2705). I still have the same employment I had at the prior hearing, except that I was Assistant Secretary and Assistant Treasurer at that time. I was elected Secretary in February, 1932. My duties have been substantially the same since the prior hearing as they were at the time of the prior hearing. I have charge of all the accounts and records of respondent and by reason of my employment have a knowledge of the amount of working capital required by respondent. This knowledge is gained by an actual experience of 22 years.

[fol. 1887] Income for Rate-making Purposes

At the prior hearing in this proceeding I prepared Respondent's Exhibit No. 11, which stated the income for rate making purposes of respondent for the year 1928 and also the first six months of 1929. I have examined pages 468, 469, and 470 of the abstract of evidence. Those pages contain a complete description of the method of preparation of Respondent's Exhibit No. 11. I also prepared similar exhibits which were introduced by me in the hearing at Minneapolis in the injunction proceedings pending in the United States District Court for the Western District of Missouri, St. Joseph Division, in the case entitled St. Joseph Stockyards v. United States of America and Secretary of Agriculture, in equity No. 204. These exhibits covered the calendar year ending December 31, 1930

and the period from October 1, 1930, to September 30, 1931. Those were given Petitioner's Exhibit Nos. 11 and 12 in that proceeding (T. 2714) and are Respondent's Exhibit Nos. 104 and 105, respectively, in this proceeding. Respondent's Exhibit No. 104 shows a net operating income for rate making purposes for the year 1930 of $251,353.40. [fol. 1888] Respondent's Exhibit Nos. 144, 145, 146, and 147, were prepared by me in exactly the same manner as Respondent's Exhibit No. 11 introduced at the prior hearing (T. 2715) following the method outlined on pages 468, 469, and 470 of the abstract of the former hearing except that for the year 1932 I used a different item for depreciation reserve. In prior years I took the entire amount of depreciation that was charged against operation during the year as taken from the books and used a compromise figure which was agreed upon between Mr. Kosters and Mr. Henrici as the straight line depreciation, based upon the cost of reproduction new, contained in the respective appraisals of Mr. Kosters and Mr. Henrici. I fully explained this in my testimony in 1929. For the year 1932, I have used the amount of depreciation as charged on the books for the year, and have deducted from this amount, as recommended by H. J. Saunders, $100,000, and added a difference to our profit as shown on the books (T. 2716).

Respondent's Exhibit No. 144 shows the net operating income for rate making purposes for the year 1927 to be $229,749.06. Respondent's Exhibit No. 145 shows the net operating income of respondent for rate making purposes for the year 1929 to be $259,888.14. Respondent's Exhibit No. 146 shows the net operating income for rate making purposes of respondent for the year 1931 to be $185,585.04.

[fols. 1889 & 1890] RESPONDENT'S EXHIBIT No. 147

Below is page one, or the summary sheet of Respondent's Exhibit No. 147, showing the net income for rate making purposes of respondent for the year 1932:

Net Profit Per Books—before Additions & Deductions			$62,645.76
Additions			
Casualty Insurance Refund Avg. 5 years		$6,128.64	
Eliminations: Depreciation			
Per Books	$122,509.92		
As recommended by H. J. Saunders	100,000.00	22,509.92	
O. R. E. Insurance		4.68	
O. R. E. Depreciation		208.85	
Fiscal Agents & Trustees		304.70	
Taxes, Real Est. & Personal Property		4,259.14	
Bond Interest		46,006.94	
Bond Discount		4,855.83	
Liberty Loan Bond Subscription		7.50	
Bad Debts		33.00	84,319.20
			$146,964.96
Deductions:			
Rent & Lease Income		$531.36	
Interest Received		5,801.19	
Dividends on Outstanding Warrants		5.00	
Dividends on Buchanan Hotel Co.		122.50	
Casualty Insurance Refund Actual		4,725.71	
Discount on Bonds		500.00	11,685.76
Net Operating Income for Rate Purposes			$135,279.20

[fol. 1891] Change in Conditions Affecting Income

I heard the statement of Mr. Bachmann that figures are contained in Government Exhibit No. 121-A from which a statement similar to pages 2, 3, and 4 of Government Exhibit No. 124 could be prepared in order to show what he considered the net operating income of respondent for the years 1927, 1928, 1929, and 1930. From my knowledge of the business of respondent, I know that certain conditions existed during those years which do not exist at the present time which are of a permanent nature (T. 2720). First, for the years 1927, 1928, and 1929, and a part of 1930, respondent operated the St. Joseph Belt Railway Company, under which management it reduced the operating expense of both companies, below what they would have normally been, had each been operated separate and distinct. For example, certain offices which would have been essential to each were occupied by one person acting for both compa-

nies; second, a drastic reduction in the price of corn was made during the year of 1932, which materially decreased the spread or profit we were making on corn as compared to prior years; there was also a reduction in hay prices, effective January 29, 1933, which materially decreased the spread on hay; third, the number of head of livestock received has substantially decreased, as shown by the figures for 1932, as compared to the figures for prior years—this decreased our revenue received from yardage, as well as the volume of feed sold and the consequent profit thereon —Mr. Topping testified as to the permanency of this situation; fourth, there has been a substantial change in the method of arrival of livestock, the truck-in receipts in all species having increased substantially, with a corresponding decrease in the arrival by rail—this has reduced our [fol. 1892] revenue for loading and unloading; fifth, as a result of this decrease in receipts by rail and increase of receipts by truck, the total amount of feed has substantially decreased, due to the fact that truck-in animals are fed by owners, a substantial amount of feed less than animals received by rail (T. 2721). The third and fourth items will be covered by exhibits prepared by Mr. Melkowski. The last item was given special study by Mr. Gorman (T. 2722).

Effect of Sale of Belt

I have prepared Respondent's Exhibit No. 148. During the years 1927, 1928, 1929, and part of 1930, the St. Joseph Belt Railway Company and respondent were operated jointly. By that I mean that the salaries of a general manager, traffic manager, auditor, treasurer, purchasing agent, cashier, superintendent, one stenographer, one timekeeper and storekeeper were joint employees of both companies. There were also certain other expenses, such as rental and the entire expense of the traffic department, which were borne jointly by these two companies. When this joint operation ceased August 1, 1930, it was still necessary for the respondent to continue to have each of these employees which previously had been joint employees (T. 2723). This company was no longer able to charge a portion of its traffic expense to the St. Joseph Belt Railway Company and found it could not reasonably reduce that traffic expense. In fact, that traffic department expense has actually increased since that time. Therefore, the expenses for the

years 1931 and 1932 and also five months of 1930 were larger to the extent to which in previous years the items mentioned had been charged in part to the operation expenses of the St. Joseph Belt Railway Company. On this exhibit, I have shown for each of the years 1927 to 1932, inclusive, that portion of the joint expense which was [fol. 1893] charged to and paid for by the St. Joseph Belt Railway Company. First, the two items, 1931 and 1932, represent a portion of the pension of the general manager which the Belt Railway continued to pay up until April 1, 1932. They are no longer paying any portion of this. The second item is the salary of general superintendent Sack, who, up to the time of his retirement April 1, 1932, was a joint employee. In these last two items I referred to the portion of our expense which still existed in 1931 and 1932. From my study of respondent's records and my knowledge of its operations, it is my opinion that respondent's expenses would have been greater in the year 1927 had not the respondent and the St. Joseph Belt Railway Company been operated jointly. They would have been greater by the amount of (T. 2724) $25,478.34. The expenses for the succeeding years would have been greater by the following amounts, as shown on Respondent's Exhibit No. 148: 1928, $24,323.92; 1929, $23,836.22; 1930, $15,268.63; 1931, $3,552.54.

If the Secretary of Agriculture gives any consideration to the earnings of respondent in the year 1927 as a guide in determining what the probable future earnings of respondent will be, he should increase our expenses by $25,478.34, and thus reduce the net operating income for that year by that amount. He should likewise reduce net operating income for the five succeeding years by the amounts given (T. 2725). That is because at the present time the situation with respect to the general operation of the Belt no longer exists. To the extent that the respondent and the St. Joseph Belt Railway Company are no longer jointly operated, the income for the previous years is not comparable to the income that can be expected in the future years.

[fol. 1894] Reduction of Feed Spreads

Respondent's Exhibit No. 149 was prepared under my direct supervision from the records of the company. Dur-

ing the year 1932 we had a drastic reduction in the price which we charged for corn, and also last month the hay prices were reduced. These changes in prices had the effect of materially reducing the spread on these items of feed which respondent (T. 2726) had been receiving in prior years. By spread I mean the difference between the purchase price and the selling price which represents our gross profit per unit. I shall begin my description of the exhibit by referring first to sheet 7, upon which I have shown the basis by which I have arrived at our present spread on corn. These figures are all taken from our records, and are really self-explanatory. They cover the purchases of corn in the year 1932 after the reduction in the corn rate effective June 2. They indicate that our present spread is slightly over 45½ cents per bushel. On sheet 4 I have compared this present spread with the spread in existence during the years 1927 to 1931, inclusive, and also the spread for the first 5 months of 1932, as the new reduced corn rate did not go into effect until approximately the first of June, 1932. I show for each of those years exactly how I arrived at the spread of corn for each year. For example, in the year 1927 the spread on corn was 62 cents per bushel. I then applied that spread on corn for the actual number of bushels sold in that year, resulting in a gross profit on sale of corn of $81,353.42. I then multiplied the present spread on corn of $.4556 by the same number of bushels, and the result is $59,781.78, which would have been the gross profit on the (T. 2727) sale of corn in 1927, had the present spread been in effect. The same computation has been made for each of the other years. The [fol. 1895] figures for each of the years on sheet 4 in the column entitled "Reduction of Income" indicate the amount by which gross earnings of respondent for the years shown would have been decreased had the present spread of corn been in effect during those years. The respondent gets gross profit on the sale of feed from the spread between the cost price and the selling price. In effect, when respondent's tariff became effective on June 2, 1932, its rates applicable to the sale of corn were reduced. In comparing the income from the sale of corn for all prior periods to the income which can be obtained in the future, to the extent that a larger corn spread is used, the income produced by that corn spread will not be indicative of what can be ex-

pected in the future. I have made the same sort of computation in respect to hay (T. 2728). Prairie hay appears on sheets 2 and 5 of Respondent's Exhibit No. 149, and alfalfa hay on sheets 3 and 6. They were computed in much the same manner as the pages applying to corn. Page 1 is a summary of the other pages, and on it I have taken for each of the three items of feed, prairie hay, alfalfa hay, and corn, the totals for each of the 6 years appearing in the columns headed "Reduction in Income," and on sheets 2 and 3 and 4, in the last column, I have totaled these amounts for each of these 6 years. I have also shown a total on each item of feed for the 6 years, and the grand total on all three items of feed for the 6 years. These last items have been divided by 6 in the last line to show what would be the 6-year average. If the Secretary of Agriculture gives any consideration to the earnings of the respondent for the past 6 years as being indicative of probable earnings in the future (T. 2729), he would have to take the amounts shown on sheet 1 from the gross income for each of the years shown, or the average for the 6 years for use with the 6-year average.

[fol. 1896] RESPONDENT'S EXHIBIT No. 149

The following is sheet 1 of respondent's Exhibit No. 149:

Summary of Decrease in Feed Income, Application of Present Spread to Prior Periods

	Prairie Hay Amount	Alfalfa Hay Amount	Corn Amount	Total Amount
1927	$5,963.25	$2,461.55	$21,571.64	$29,996.44
1928	9,583.87	4,314.89	27,050.31	40,949.07
1929	6,568.58	5,061.85	32,555.85	44,186.28
1930	4,946.28	6,942.65	29,132.93	41,021.86
1931	2,149.44	3,971.09	21,770.83	27,891.36
1932	2,087.44	3,213.54	5,816.74	11,117.72
Total 6 years	$31,298.86	$25,965.57	$137,898.30	$195,162.73
6 year average	5,216.47	4,327.59	22,983.05	32,527.12

I do not think it would be fair to assume that the average earnings of respondent from feed in the future might be expected to equal average earnings for the past 6 years, less a deduction for each of the years shown in the last column of sheet 1 of Respondent's Exhibit No. 149. That assumption could not be made unless it might reasonably be expected that as much as that would be sold, on the aver-

age, during the next future years as was sold during the period of 1927 to 1932, inclusive. That would depend, first on the volume of receipts, and second upon the percentage of receipts coming in by rail and by truck. Mr. Melkowski will cover the effect of the decline in receipts, and Mr. Gorman will cover the effect of the change in receipts from rail to truck (T. 2730).

[fol. 1897] Land Values

I had charge of the records of the respondent in 1919. Those records indicate that on February 28, 1919, and March 17, 1919, respondent owned all of the capital stock of the St. Joseph Warehouse & Cold Storage Company. On the first date the sale of .31 acres of land by respondent to the St. Joseph Warehouse & Cold Storage Company was recorded, and on the second date the ledger credit was made.

Cross-examination:

The exact title of my position with respondent is secretary and assistant treasurer. As secretary I have charge of the company's accounts. I am not a certified public accountant: I could never qualify in that respect. I am not a graduate of any course in accountancy. I have practical knowledge over a long period of years. I have had experience with the St. Joseph Stock Yards Company for 22 [fols. 1898–1906] years, and prior to that, I was with Swift & Company at Kansas City. While with Swift & Company I was employed from being an office boy through the various accountancies up to chief clerk. As chief clerk, in a general way, I had something to do with the accounting of Swift & Company. By in a general way I mean I had charge of them to see that their work was performed. I was pretty familiar with the law of debit and credit (T. 2734), and that is all there is to accountancy. As chief clerk of Swift & Company, I was never a ledger man, except the salary ledger. My position as chief clerk was not comparable to that of a bookkeeper. I never ran a ledger. I consider my experience, both with Swift & Company and the St. Joseph Stock Yards Company, as bookkeeping because we had a large force of men and accounts for different things, and they all had to balance out, operating state-

ments and everything. I helped at times to prepare them. I do not do all the auditing for the St. Joseph Stock Yards. I do my portion of it, in fact, I get around to see how the accounts are in line (T. 2735). The auditing done by Swift & Company is a periodical audit. A part of my title is that of auditor, you might say private accountant. The contribution of the Belt Railway made to the auditor's salary was a contribution to my salary, but in amount it was rather small. There was also a contribution to the treasurer's salary, but that was not a contribution to my salary. I was not treasurer at that time. I was assistant treasurer. I am not treasurer now. I am assistant treasurer (T. 2736).

[fol. 1907] Income for Rate-making Purposes

Mr. Henrici and Mr. Kosters agreed on the service lives of the depreciable property, and that worked out on the straight line basis came to the compromise figure of $126,900, as shown in Respondent's Exhibit No. 10 and described on pages 403 and 404 of the abstract (T. 2762).

Effect of Sale of Belt

Referring to Respondent's Exhibit No. 148, the thought behind that exhibit is that respondent now has to assume all of that expense which was once borne by the Belt Railway. I had this exhibit prepared (T. 2763).

At this point counsel for the respondent stated that his purpose in the preparation of these exhibits was that if the Secretary is to consider income in years prior to 1932, and conditions which existed at that time and which affected income and which conditions no longer exist, he necessarily must take into consideration the extent to which those changed conditions have affected the income in those years. For example, the year 1927 is not indicative of present operating conditions, at least to the extent of $25,478.34, as shown by Respondent's Exhibit No. 148 (T. 2764). The expenses shown in that exhibit represent a proportion of the salaries for men who were in the joint service of the two companies. Referring to the item "general manager 1" [fol. 1908] and "general manager 2," the footnote will explain that. Mr. Barkley was general manager up to and including the year 1929 and then he was on a pension, and Mr. Topping has been general manager since that time (T.

2765). The Belt Railroad paid part of Mr. Topping's salary during 1930 and there might have been a slight amount in the latter part of 1929. The compilation, which is Government Exhibit No. 142, was prepared under my supervision in response to a request from Government counsel (T. 2862). That exhibit represents the amount of salary paid by the Stock Yards Company for each of the six years, 1927 to 1932, to the various men holding the positions indicated in the left-hand column of the exhibit. It does not include in any way the amount of salary these employees received from the Belt Railroad Company. There were no reductions of salaries in any of these positions made at the beginning of the year 1933, and none have been made since that time. I don't think that any reductions were made in 1932 which, if carried into effect through the year 1933, would make the total salary for 1933 less than the salary for 1932 (T. 2863). Government Exhibit No. 142 shows that the proportion of joint salaries paid joint employees by the St. Joseph Stock Yards Company for the years 1927 was $19,988.33; 1928, $20,025.19; 1929, $20,688.54; 1930, $23,140.80; 1931, $29,518.29; 1932, $29,530.42. Referring to Respondent's Exhibit No. 144, page 1, the item casualty insurance refund average for five years $4,926.90, which is an addition, and the deduction casualty insurance refund actual, $5,899.12, the latter figure represents the actual amount received during the year 1927, and this amount is deducted from the total income, and the average amount received during a five year period, namely $4,926.90, is added (T. 2768).

[fol. 1909] Reduction of Feed Spreads

Referring to Respondent's Exhibit No. 149, I stated that respondent decreased its charges for feed and also decreased the spread. I presume the reason for lowering prices was primarily the conditions of the times. In other words, it was a concession to these hard times (T. 2769).

I stated on direct examination that it was my opinion that if the Secretary should base his determination of reasonable rates on a consideration of six years operation, he should take into consideration the showing made by this exhibit that the income of feed would have been less during prior years than it actually was under the spreads that

obtained in those years if the present spread were applied (T. 2770).

[fol. 1910] Mr. John J. Melkowski, a witness called by respondent, being first duly sworn, testified in substance as follows:

Direct examination:

Income for Rate-making Purposes

I testified in the prior proceeding and have the same employment I had then, with the exception that I am now assistant secretary and cashier (T. 2779). I was made assistant secretary in February, 1932. I have charge of the cash records, collection of yardage, feed and freight unloading and loading, and all other accounts that may be due the company, make deposits, check disbursement vouchers, make transfers of stock certificates, keep the stock register, make the bills for loading and unloading charges, make up the official monthly statement of receipts and shipments of livestock, and other minor duties.

Decline in Receipts

Respondent keeps a record of the receipts of livestock by species for the various years. I prepared Respondent's Exhibit No. 151 (T. 2780) from these records. Respondent's Exhibit No. 151 is a summary of the receipts of livestock for the years 1927 to 1932, inclusive. It shows the decrease for the year 1932 by species from the six year average, 1927 to 1932, inclusive, to be as follows: Cattle, 107,160 head and $29,716.53 in yardage received; calves, 11,121 head and $2,753.61 in yardage received; hogs, 235,718 head and $22,822.09 in yardage received; sheep, 218,846 head and $12,116.28 in yardage received; horses and mules, 1,274 head and $1.18 in yardage received. The exhibit further shows that for the year 1932 there was a total decrease in all yardage of $67,409.69 from the six year average. The [fol. 1911] number of head includes animals billed through that stop for feed, water and rest, and animals billed direct and offered for sale, but not sold. From these no yardage is obtained, but loading and unloading revenue and revenue from feed is obtained. The yardage received includes

actual initial yardage received and also half yardage (T. 2783).

Decline in Loading and Unloading Revenue

I prepared Respondent's Exhibit No. 152 from the records of the company, which exhibit shows the loading and unloading revenue received by respondent for the six years 1927 to 1932, inclusive. This exhibit shows there was a decrease from the six year average for the year 1932 of $14,886.71 in the unloading charges received and $4,575.08 in the loading charges received, or a total of $19,461.79. The exhibit further shows that the number of cars unloaded for the year 1932 was 15,880 less than the six year average and 4,952 less cars were loaded in 1932 than the six year average (T. 2784 and 2785).

Cross-examination:

In columns 1, 3, 7 and 9 of Respondent's Exhibit No. 151 is shown the number of animals received, including throughs on which no yardage is paid and also livestock which stops to try the market on which no yardage is paid. Columns 2, 4, 6, 8 and 10 show the amount of original yardage collected and also the resale yardage. No feed spread is included and they do not include any income from loading or unloading. The only income respondent receives on through livestock and animals which stop to try the market and go on without being sold is the loading and unloading charge and the feed spread (T. 2787).

[fol. 1912] Mr. Thomas C. Gorman, a witness called by respondent, being first duly sworn, testified in substance as follows:

Direct examination:

Income for Rate-Making Purposes

Effect of Increase in Truck Receipts on Feed Sales

I reside in St. Joseph, Missouri, and I am a clerk at the St. Joseph Stock Yards where I have been employed about nine years. I attend to all the clerical work con-

nected with truck-in receipts. I am familiar with the methods of operation of respondent, particularly in reference to feeding. My duties have caused me to observe these operations from time to time. I spend about five hours a day out in the yards (T. 2788). I have a chance to see the practices in respect to feeding rail and truck shipments while I am in the yards. I am also familiar with the records that the Stock Yards Company keeps in connection with those operations.

About November 1, Mr. Topping asked me to make a study of feeding operations in the yards, with the view to obtaining a comparison between stock received by rail and the stock received by truck. Our market day closes at noon on Saturday, and November 5 was a Saturday, and, at that time, noon of November 5, and on the following morning, I made a check throughout the yards of the various amounts of feed that might be on any order but not fed by the commission firms, with the view of obtaining the correct amount of feed bought for each week. Each firm has a portion that is allotted to it, and a booth or shack in which feed and equipment are kept. This extra feed that they had on hand at noon on Saturday would be used during the following week, and, therefore, it was part [fol. 1913] of the feed to be considered in this test. That was all done on Saturday, November 5, and Sunday, November 6 (T. 2789). I made a record of all that feed. My study was restricted entirely to feed fed by commission firms. The next thing I did was to obtain the amount of feed ordered on Monday, November 7, by the commission firms. This was taken from the records of the Stock Yards Company, from the original tickets made out when the feed was ordered and supplied. Then, I checked up the total number of head received by rail, checked through the accounts of sales of the different commission firms. I personally saw the men who fed the livestock and found out the exact amount of feed that had been supplied to these rail receipts. This was done each day during the first week of November. On Saturday, November 12, at noon, I went through the same process that I had gone through on the previous Saturday. I checked all the feed that was on hand in the commission booths, deducted this feed on hand from that ordered during the week, leaving the net result the exact amount of feed that had been used in the yards

by all species (T. 2790). The total amount of feed used in the commission area of the stockyards was the amount of feed on hand Saturday, November 5, 1932, plus the amount sold to the commission firms during that week, less the amount actually on hand the following Saturday, November 12, 1932. I followed that same process for a period of eight weeks, immediately succeeding November 5, 1932, the test closing Saturday noon, December 31, 1932. I personally kept all the records. The information as to the amount of feed fed rail shipments was obtained direct from the people that fed those animals (T. 2791). It would have been rather tedious to go through the same processes for getting feed fed to truck receipts, namely, by checking the account of sales as I had done on the rail receipts. There [fol. 1914] were thousands of those account sales, so I got the amount of feed used by truck-in livestock, by taking the net feed used each week, in the manner I have described, and subtracted from that total the amount of feed that was fed to rail receipts for the week, and the amount left should be the amount of feed used by the drive-in receipts for the weekly period. That was true because I gave consideration only to feed ordered by commission merchants, so there would be no other stock in the yards to which to feed that, and I had the total amount of feed used by the rail receipts. The total amount used throughout the whole yards was necessarily the difference between what the rail animals were fed and the total amount of feed, and that must have been fed to truck receipts. There was no other way in which livestock could get into the yards without my knowing it, and if I found that they had slipped in speculator stuff, I could very easily throw that out, but nothing like that occurred during the time of the test (T. 2792). So I knew that the amount of feed fed to livestock in the commission division, less the amount fed to rail receipts, represented the amount actually fed to truck-in receipts. It was not possible that any of the total amount of feed to which I have referred as being sold during any week could have been fed to animals belonging to speculators. I was not considering any of the feed used by spectators and dealers in this test at all. The records of that feed are entirely separate, so I could exclude it. We keep four different records at our feed barns. They are, first, the record of the feed sold and delivered to commission merchants in

the yards; second, the feed delivered to speculators and traders; third, the feed delivered and fed to rail shipments in the St. Joseph yards for feed, water and rest; and, fourth, the feed used by ourselves in our stables [fol. 1915] throughout the yard for our orders. I had available these four records (T. 2793). In this feed survey, the only record I considered was the feed that was delivered to commission merchants. I have summarized my entire study in Respondent's Exhibit No. 153 (T. 2794). The reason that the exhibit shows that the study began on November 7, while I stated it actually began on November 5, is due to the fact that after the market closes on Saturday noon what transpires from then on is considered as a part of the next market day's business, which would be Monday, November 7. I have the work sheets and the supporting data from which Respondent's Exhibit No. 153 was made.

Witness then proceeded to explain the data shown on Respondent's Exhibit No. 153 (T. 2795 to 2806). Summarized this exhibit shows: Prairie hay fed to cattle and calves, 823.3 pounds per 100 head rail receipts and 354.3 pounds per 100 head truck receipts; alfalfa hay, 45.3 pounds per 100 head rail receipts and 87.6 pounds per 100 head truck receipts; total hay, 868.6 pounds per 100 head rail receipts, and 441.9 pounds per 100 head truck receipts; corn fed to hogs, 7.84 bushels per 100 head rail receipts and 3.01 bushels per 100 head truck receipts; hay fed to sheep, 1.6 pounds of prairie hay per 100 head rail receipts and 1.3 pounds per 100 head truck receipts; 36.1 pounds of alfalfa hay per 100 head rail receipts and 11.7 pounds per 100 head truck receipts; 37.7 pounds of total hay fed per 100 head rail receipts and 13 pounds per 100 head truck receipts. As a general proposition this exhibit indicates that rail receipts consume more feed per head than do truck receipts. The reason for that, not only from my study but the chance I have had to observe during my time in the yards, is because of the method of transportation, and the element of time during which the stock is in [fol. 1916] the yards. Stock arriving by rail is confined during shipment for a longer period than stock arriving by truck. They are in the yards for a longer period. The time during which they are in transportation affects their shrink materially, and that the commission merchant usu-

ally endeavors to replace before the stock is sold. So, there being less traveling to truck-in receipts, they would necessarily take a smaller fill. I heard the testimony of Mr. Black in that respect, and it conforms to my knowledge (T. 2801).

I prepared Respondent's Exhibit No. 154, the figures are obtained from different sources. Those figures that have reference to feed per hundred head have been taken from the test or survey that I made for the period of eight weeks, from November 7 to December 31, which is now Respondent's Exhibit No. 153. The figures of receipts were taken from the records of the St. Joseph Stock Yards Company. The figures as to percentages received by rail and by truck for the year 1932, were taken from the records of the Stock Yards Company. The figures showing the percentages of receipts by rail and by truck for all years prior to 1932 were taken from a bulletin issued by the Bureau of Agricultural Economics of the United States Department of Agriculture, entitled: "Drive-in receipts of livestock, 1931, compiled by the statistical section, livestock meats and wool division." This is dated February, 1932 (T. 2802). Sheet 1 of this exhibit refers to the year 1927. I have taken the total receipts of cattle and calves for the years 1932 and 1927, and the percentages of receipts by rail and by truck for those two years. The figures on hay fed in 1932 per hundred head are taken from my feed survey, which is Respondent's Exhibit No. 153. The difference between the prairie hay fed to truck receipts and the prairie hay fed to rail receipts amounts to 469 pounds [fol. 1917] per hundred head less. The figures on alfalfa hay are taken from the same survey and show a gain in alfalfa hay fed to truck-in receipts. This gain amounts to 42.3 pounds per head. The percentage of truck receipts for 1932 over 1927 is 43.67 per cent which represents 279,763 head of cattle and calves that would have come in by truck in 1927 had the same conditions of transportation existed. I have multiplied this figure of 279,736 head, first by 469 pounds loss on prairie hay, and, second, by the 42.3 pounds gain in alfalfa hay. These two results are then multiplied by the respective spreads (T. 2803) existing in 1927 in the sale of both alfalfa and prairie hay. The re-

sults are shown in one instance as a loss in prairie hay, and as a gain in alfalfa hay. The net figure showing the net loss of $8,460.89 is merely the result of subtracting the gain from the loss. The spread figures are shown in the upper right hand corner of the exhibit, and were taken by me from the respondent's books showing purchases of feed and sales to commission merchants at tariff rates in 1927. I heard the testimony of Mr. Black as to why truck receipts eat more alfalfa hay than rail receipts. Mr. Black in his testimony said that it was due largely to the greater percentage of native cattle arriving by truck which would bring up the amount of alfalfa hay fed to those truck receipts (T. 2804). Besides this, there is another element that enters into it that for a short feed in order to put on a greater fill, alfalfa is a very good feed for that purpose, it is a sweet feed, and animals take on quite a bit of water and for a short period it is just about one of the best methods of putting on fill. Relatively, alfalfa hay is not fed in anywhere near the quantity per head that prairie hay is fed. The figures for the net loss in sale of feed for the year 1927 as to hogs and sheep were calculated in exactly the same manner as I described the calculation for cattle [fol. 1918] and calves. At the bottom of the page I have shown the loss in feed revenue due to transition to trucks. The total at the bottom of page 1 of Respondent's Exhibit No. 154 of $33,185.64 represents the estimated gross loss in feed revenue had the same conditions of transportation existed in 1927 that did exist in 1932. If the receipts in the year 1927 had come in in the present ratio of truck to rail, based upon my feed study, respondent would have received $33,185.64 less in net income (T. 2805). Sheets 2, 3, 4 and 5 are prepared exactly as sheet 1, the only difference being that they cover succeeding years. They show an estimated gross loss in feed revenue due to transition to trucks: 1928, $32,412.35; 1929, $25,694.00; 1930, $15,596.91; 1931, $6,246.19.

I made a test of the difference in feeding over a four-week period for the month of November, 1928. The Stock Yards Company's record would show only the total amount of feed used during that period. The records I used in this 1928 survey were the accounts of sales of the commission merchants at the yards. I was only able to obtain the records of 18 firms out of a total of 28 firms (T. 2806). The

18 included the firms doing a large business and the average firms: I would say it would represent the average of them all. It included some of the largest and most prominent. The commission merchants keep a separate record of the amount of feed fed to rail receipts and truck-in receipts. Based upon my 1928 study, I found that rail receipts were fed 516.2 pounds of prairie hay more per 100 head than truck receipts were fed. That figure may be compared with the figure on the left hand side of sheet 1 of Respondent's Exhibit No. 154, entitled: "Loss by pounds in prairie hay fed due to transition from rail to truck per hundred head, 469 pounds." In alfalfa hay I found that 100 head of cat-[fol. 1919] tle and calves received by rail were fed 85.7 pounds of alfalfa more than truck receipts of cattle and calves. That figure is comparable to the figure on sheet 1 of Respondent's Exhibit No. 154, directly under the item of prairie hay mentioned, titled "Gain by Pounds in Alfalfa Fed Due to Transition from Rail to Trucks Per Hundred Head, 42.3 pounds." I found in November, 1928, that 100 head of hogs received by rail were fed 5.99 bushels of corn more than 100 head of hogs received by truck. That may be compared to the figure in the second division of the left hand side of the sheet No. 1, entitled: "Loss by Bushels, in Corn Fed, Due to Transition from Rail to Trucks Per Hundred Head, amounting to 4.83 bushels." I found that sheep received by rail were fed 1.1 pounds of prairie hay more than 100 head of truck receipts (T. 2808). That compares with the figure on the left hand side of sheet 1 under the third division, titled "Sheep," and further titled "Loss by Pounds in Prairie Hay Fed, Due to Transition from Rails to Trucks per hundred head, .3 pounds." In 1928, I found that 100 head of sheep received by rail were fed .4 pounds more than 100 head of receipts received by truck. Had I used these 1928 figures, instead of the figures resulting from my recent feed study, the estimated gross loss in feed revenue would have been considerably greater than the figure arrived at by reason of the 1932 study (T. 2809).

In 1932, our percentage of cattle received by rail was 49 per cent. The percentage by truck was 51 per cent. For calves, the rail receipts were 21 per cent of the total receipts and the truck receipts were 79 per cent of the total receipts. There is a figure that Mr. Christensen has in

Government Exhibit No. 108 of all species. I figured out that percentage also, which is 45 per cent of all species came [fol. 1920] in by rail in 1932, and 55 per cent of all receipts came in by truck in 1932 (T. 2810).

Cross-examination:

The cause for the loss of feed revenue on truck-in livestock being greater in 1928 than in 1932 is that prior to these last two year truck receipts were not given any great amount of regard in the yards. They were handled as part of the receipts, but there was no great effort on the part of commission men to bid for that class of trade, nor to give it the same degree of care that should be given to rail shipments. As to whether in 1932 these receipts tended to come from greater distances with greater shrink and, therefore, consumed more feed that is partly true, but I still want to say that the commission man formerly did not look upon his truck receipts as the major part of his business. They were an item that he considered cost him more in service than the sale of rail receipts. The custom was and is yet to sell those animals as quickly as they arrived. Formerly, they came in in lots of one and two head, and were sold quickly, and they still (T. 2811) are, and he did not bother about feeding them. Truck receipts do consume more feed now than they did formerly. More attention is being given to that by everyone connected with the livestock industry now-a-days. They have all found that this is a method of transportation that is here to stay, and they have to figure on a greater percentage of their receipts coming in by truck at present, and, from all indications, in the future. With respect to Respondent's Exhibit No. 154, the percentages of receipts to the feed-lots are figured on the basis of 1932 conditions and the exhibit undertakes to show what the arrivals by rail and truck respectively would have been in each of the years 1927 to 1931 if the same ratio of rail and truck had been maintained [fol. 1921] in those years as was maintained in 1932 (T. 2812). After finding the percentage of receipts that would have come in by truck in prior years had the same conditions existed, reducing that percentage to head of receipts for that year, and we have arrived at these figures showing the loss or gain, by reason of the difference in feed to the two classes of receipts (T. 2813). I could have ascertained

the loss per one hundred head but I did not do so. I figured it out on the basis of the total percentage of receipts. The amount of $9,250.22 is the value of 1,312,088 pounds of prairie hay at 70½ cents per cwt., and represents the loss which would have been occasioned in the sale of prairie hay in 1927 if the rail and truck-in receipts had come in in the same ratio as they came in in 1932. In making this computation I used the feed charges in effect in 1927 (T. 2814), and in determining a similar figure for 1928 I used the feed charges in effect in 1928. The same is true for each year shown on the exhibit (T. 2815).

ROBERT G. SYMON, a witness called by respondent, being first duly sworn, testified in substance as follows:

Direct examination:

Traders and Speculators

I live in St. Joseph, Mo., and am in the livestock order buying business at the St. Joseph Stock Yards and have been for 12 years, operating under the style of Corrigan & Symon, a partnership. I am the resident partner, having personal charge of the business conducted in St. Joseph (T. 2869). The statement on Government Exhibit No. 108 that my firm, trading firm No. 1, purchased 122,918 hogs in the first nine months of 1932, and 44,304 for the last three months of 1932, is not a correct statement of my actual purchases at the St. Joseph market for the year 1932. I [fol. 1922] only purchased 166,242 hogs. The bulk of these hogs were shipped on orders and the balance were sold in the St. Joseph Stock Yards. We resold and reweighed 16,546 hogs at the St. Joseph Stock Yards and paid the reyardage or half yardage charge applicable to resales on the market (T. 2870). 1,356 of these hogs were shipped to other markets for sale; that left a balance of 148,340 hogs and they were all shipped on orders. I am registered with the Secretary of Agriculture as an order buyer and publish with the Secretary charges covering my services as an order buyer. In respect to each and every one of the hogs covered by this 148,340 which I shipped on order I charged the published charge for my services as an order buyer. These hogs that were shipped out to apply on orders were

reweighed. We had to have the weight in order to know the amount of money that our customers would have to pay us. Our customer has to have that weight and we have no other way of arriving at it (T. 2871). These hogs were just weighed to a number. When these hogs are reweighed they are reweighed from Corrigan to a number, the number being a packer to whom they are going. I do not believe our practice as an order buyer is any different than the usual practice of order buyers. At the time we buy the hogs we have to sort them. We have an order for these hogs at a certain price and when we get our hogs sorted up we try to charge the packer who gave us the order as near to what these hogs cost as possible. However, it is very hard to figure what these hogs actually cost because of buying so many hogs of different weight and quality (T. 2872). The bulk of the time our orders are for one or more double-deck cars of a specified weight. It is not possible for me to go out on the St. Joseph Stock Yards and buy the identical carloads specified in the order. It is [fol. 1923] necessary for us to buy hogs containing as many of those particular weights and qualities as possible and then take off what we can use on the order. Assuming in our buying a certain number of hogs that there are hogs of various grades in that particular purchase, we pay a number of various prices depending on the grade and weights. If we buy 1000 hogs, we probably pay more than half a dozen specified prices. In buying them we do not average the price. It would be impossible to do that (T. 2873). When it comes time to allocate the particular hogs we have purchased to the orders it is possible with fair accuracy to ascertain the exact cost of these hogs. That is the price that we use in charging our principal plus our commission as an order buyer. That is the general practice at all markets, I believe. Ofttimes in our purchases of hogs we get certain animals which we are compelled to buy with other animals and which do not apply to any orders that we have. We resell them on the St. Joseph market or if they are applicable to any other orders we put them on another order. If they are not applicable we sell them on the St. Joseph market and pay the reyardage charge. That has been our practice. These 148,340 hogs which we shipped on orders in the year 1932 were not resold on the St. Joseph market (T. 2874).

Cross-examination:

I am a hog buyer for Corrigan & Symon. It is the practice of Corrigan & Symon and other order buyers on this and other markets when they go out into the yards they have certain orders to be filled. We anticipate certain other orders. We buy hogs as nearly as we can to conform to the requirements of those orders but are not able to find carloads for sale which can be bought to ship right out so that they will fill our orders satisfactorily. We find in the [fol. 1924] carloads that we do buy some hogs that will fit the requirements of one or more of our requirements and other hogs that will not fit these requirements (T. 2875). Therefore, all the hogs that we buy are weighed to Corrigan & Symon and we take title to them. Then we sort out of the general mass of hogs that we have bought the carloads to fit our various orders and the hogs that do not fit with any order we either sell on the St. Joseph market or ship to some other market to be sold. As far as I know that is the practice of all the other order buyers.

We charge our published commission on all the hogs which we ship to fill orders even though the hogs were weighed to Corrigan & Symon and were sorted out of the mass that we had purchased. There are very few times when we are able to buy a carload of hogs that conform to an order so that they can be shipped out without sorting. There are times, however, that this can be done and in those instances we charge the regular published commission (T. 2876). There is no difference in the charging of commission between whether we find a car of hogs that can be shipped right on or whether we have to sort out of several cars. When we find a carload of hogs that exactly fit the order they are weighed to Corrigan & Symon in all instances (T. 2877).

[fol. 1925] Rebuttal Evidence of Government

MR. HERMAN C. HENRICI, a witness previously called by the Government and sworn, being recalled, testified in substance as follows:

Direct examination:

Land Values

Cost of Filling Land

Government Exhibit No. 129 was prepared by me and is an estimate of the cost per cubic yard shown in detail of the dirt necessary to fill the area of the stockyards. I heard the testimony of Mr. Kosters and Mr. Leslie relative to the stockyards areas which were filled and the cost of so doing. This exhibit undertakes to show the cost of filling these same areas (T. 2816) in the same depths. I used the unit price based on the same approximate quantity that was testified to by Mr. Leslie and Mr. Kosters. As to how this exhibit was made up and the source of information from which the cost was calculated, a certain capacity of shovel was estimated, the cost of the shovel was determined from a manufacturer who handles shovels. The cost of trucks was determined from manufacturers who sell trucks. The number of trucks was assumed. The cost of operating, that is, the general experience in connection with maintenance, gas, oil, grease, was taken from the manual of the Associated General Contractors of America, a handbook used generally by contractors all over the country and made up by the Association of General Contractors of the United States. The labor was based on present wages or the scale that was in effect August 1, 1932, and the amount of actual working time was estimated, already shown in another Gov-
[fol. 1926] ernment exhibit, from (T. 2817) the meteorological data given by the Weather Bureau. Taking these things into consideration, the cost per cubic yard was estimated at $.528. The reason that I assumed 8 trucks was that for the distance the material had to be hauled, the idle time necessary, the size of the shovel which we estimated, it appeared that eight trucks would be about the right number to handle this amount of dirt in the length of time specified. That is, 8 trucks would be the most economical number to use on the job.

Government Exhibit No. 130 is the estimate of material and equipment and labor necessary to fill the stockyards area that was estimated necessary (T. 2818) to be filled. It is based on two estimates, one of 100,000 cubic yards, and another of 200,000 cubic yards, depending on the necessary fill, and it is reduced to cost per cubic yard, namely, $.265 for 200,000 cubic yards, and $.33 per cubic yard for 100,000 cubic yards (T. 2819). This estimate, as outlined in Government Exhibit No. 130, contemplates the filling of the areas described by Mr. Kosters, Mr. Leslie and Mr. Churchill in their testimony. As to the sources of information upon which the exhibit was based, the Victor Phillips Company gave us the price on the pumping equipment which includes the pump and the pipe and fittings, hoists, block tackles and cable, priming pump, and the necessary steel guide cables and ropes. We got the estimate on the barges, on the steel barge and the steel pontoons from the Standard Steel Works, North Kansas City. We got the estimate of the motor from the General Electric Company; the estimate of the necessary wire from the Graybar Electric Company. We figured on setting up the plant in Kansas City and transporting, that is, transporting it by the river up to St. Joe, installing it here, and the necessary cost to transport the equipment back to Kansas City again. [fol. 1927] The labor is based on the labor wages that were current August 1, 1932, the current cost is based on the cost of current at Kansas City. We did not have the schedule of rates in St. Joseph, but used a comparatively high rate for current in Kansas City, thinking that would be ample to provide for the current in St. Joseph. We estimated, taking all things, the overhead, the major repairs (T. 2820) the oil, were taken from the Associated General Contractors, and the time estimated for the work was 5 months for the 200,000 cubic yards, and 2½ months for the 100,000 cubic yards. The Victor Phillips Company is engaged in the machinery business selling machinery of the types and kinds listed under equipment required on page 1 of this exhibit. The Standard Steel Works manufacture steel barges and steel pontoons of the kind we have listed on page 2 of the exhibit. The Graybar Electric Company manufactures and sells electric supplies (T. 2821) and jobs cables of the type I have listed on page 2 of the exhibit. They also sell them.

Cost of Laying Railroad Track

Government Exhibit No. 131 was compiled by my employees under my direct supervision. It is a compilation to determine the cost of laying railroad track, including one main line switch. I heard the testimony of Mr. Kosters relative to the cost of railroad track adjacent to the St. Joseph public elevator and Larabee Mills tracts as shown on supplemental map No. 3 in Government Exhibit No. 128. The estimate contained in Government Exhibit No. 131 is an estimate of the cost of laying a similar track (T. 2822) at the same location. As to the sources of information for this estimate and the manner in which it was compiled, we have current quotations on track materials; that is, on rails [fol. 1928] and angle bars, bolts, spikes. We got from Dierks and Company the price of creosoted ties. We got from Ryerson the cost of the turn-out switch points and guide rails, frogs and so on. We used the labor wage that was current August 1, 1932, and upon that basis made up this estimate which includes a mile of track, two rails, and one turn-out, totaling $3.78 per lineal foot of track. Dierks & Sons are people who furnished quotations on lumber for St. Joseph and are located in Kansas City. They handle treated ties. Ryerson is engaged in the business of supplying railroad materials and supplies, such as rails, turnouts, switches and all that kind of thing (T. 2823). They are located at Chicago, Illinois.

Land Values

Relation of Cost of Fill to Value of Land

As to whether there has come to my attention any actual occurrences in which the cost of filling lands may exceed [fol. 1929] the value of the lands when filled (T. 2825), I could not answer directly for the reason that I know lands have remained vacant for a considerable period of time which were required to be filled in order to sell and the value of the land had not reached the point where they could afford to fill them. The problem of filling land to bring it up to grade presents an analogous situation to cutting land down to bring it down to grade from an economical standpoint (T. 2827). I have had experience estimating the cost of excavating land down to a certain grade to determine whether the value of the land after it was excavated

would justify the cost of excavation. That experience occurred across from the Union Depot in Kansas City; for what they call the Sign Board Hill, most generally called that. It consists of two ledges of rock and clay and shale. The land can be bought for the amount of the taxes, but we estimated, at one time, in thinking,—in 1920 or 1922, somewhere around there,—that that land could be economically cut down to grade, but the cost of cutting the land down to grade was greater than the price we figured that the land could be sold for. As to the steps I proposed to take in this excavation in order to reduce costs, there was enough shale there that we figured could be made into brick, and it was contemplated installing a brick plant. There was some rock, which we figured we could put in the crusher and use the rock to some extent, and the dirt we figured we could get rid of most economically by handling it on flat cars which were within a short distance of there in the Terminal Railway Company, and could be reached by an open driveway. This land has remained unimproved to this day (T. 2829).

[fol. 1930] Cross-examination:

Cost of Filling Land

I never did any excavating in St. Joseph. The figures contained in Government Exhibit No. 129 were not obtained from parties who are in the excavating business in St. Joseph. I did not consult any such parties in connection with the preparation of any of the data represented in Government Exhibit No. 129, except that I think I have already testified that the scale of wages was obtained from the unions in St. Joseph. According to my figures, I would put in this fill at the rate of 12,288 cubic yards per month and it would take the number of months determined by dividing that figure into the total amount of fill. My computation in Government Exhibit No. 129 does not take into consideration any cost which would be incidental to increasing the construction period by that number of months. We have estimated the land would be ready before construction started (T. 2830). Anything such as interest and taxes on land during the course of this fill is not taken into consideration (T. 2831). The figures I took from the Manual of the Associated General Contractors of America in-

clude depreciation on the truck and the purchase of a new truck when it is necessary to replace it. I had nothing to do with the preparing of that Manual. I do not know what operating conditions that Manual took into consideration except what the Manual says. I do not know how much grade I would have to go up to get up King Hill. I have not even been there (T. 2832). It would increase the cost, of course, going up a steep hill. The extent of that increase would depend upon the character and grade of the hill. I have never been on King Hill.

We have done some excavating by hydraulic methods, [fol. 1931] but no filling. Personally, I have never pumped any material of any sort out of the Missouri River to be used for fill. As engineers, we were interested in the Consumers Sand Company which pumped sand out of the river for commercial purposes. We were engineers for that company. They represent about 35 companies up and down the Kaw River and the Missouri River and they have a number of plants where they pumped sand and we were engineers for that company (T. 2834) for a period of about a year and a half or two years in 1923. I was personally connected with that engineering work. My work was connected with any problems that had to do with the location and assembling of plants. In other words, the first thing we had appraised all their plants, some 65 plants at that time. Some of the plants were not taken into the consolidation. It was a consolidation of a lot of sand plants which resulted in the Consumers Sand Company with headquarters in Kansas City. To start with, my work consisted chiefly of the appraisal of their properties. We had operating data which they had accumulated from time to time and we took part in the redesign of some of their plants. We now have that data in Kansas City. It was turned over to us in connection with out work (T. 2835). Their plants are on the Kaw River. They did have a plant on the Missouri River at Kansas City under the name of the Stewart Sand Company, I think it was, then. I am positive of it. I am just as positive of that as I am of these various other statements and costs I have set forth in Government Exhibit- Nos. 129 to 131, inclusive. I am positive they had a plant on the Missouri River. I am not sure under what name they operated. They changed names a number of times. It was the Peck-Thompson, and then

the Thompson Sand Company, and the Stewart Sand Company, and some of those plants were taken in on the [fol. 1932] consolidation. I am not positive it was the Stewart Sand Company (T. 2836). Having data in my office concerning the operations of the Consumers Sand Company was not all I had to do with the operations of that company. We acted as consulting engineers during the time of the consolidation. We were consulted in reference to the location of their plants and how they were to be built. We had various problems of various plants. One was at Topeka. I do not recall where that plant was built. I have the information at Kansas City. It was built on the bank of the river. Some of their plants were not on the river. Some plants were on the lake. There were some plants we had to investigate that were down in Oklahoma (T. 2837). There was one plant on a lake. That plant was in existence when I began my investigation. It was partly my duty to appraise it and partly to advise in connection with its reconstruction. I think they finally abandoned it. We discussed various features of its reconstruction and I advised them how to reconstruct that plant. There were economic problems involved besides the reconstruction of that plant and they did not reconstruct it. That plant was built out in a lake (T. 2838). There was one plant located on a boat near Kansas City and they pumped from the boat to the bank of the river. We investigated that plant, including its operating characteristics, and discussed the disposition of the plant. I did not recommend that it be reconstructed. As I recall, the operation of the plant was very economical and at that time it was operated by Jackson Walker Cole Company, and we decided to leave that plant just as it was. After looking it over, I found that it was all right as it was. The figures I have set forth in Government Exhibit No. 130 are partly based upon the experience just detailed as being appraisal and consulting engineer for the Consumers Sand [fol. 1933] Company. Of course, I cannot specifically state (T. 2839) from what experience these figures are obtained, but they are based on my general experience and knowledge of engineering. The material included on page one of the exhibit under "Equipment Required" fits in with my experience with the Consumers Sand Company. I mean that from my experience that that material would be suitable for operation on the Kaw River, it would be suitable for opera-

tion on the Missouri River. If that is not a fact, of course, my computation would be in error. Any equipment that would be suitable for use on the Kaw River would likewise be suitable for use on the Missouri River. I know the Standard Steel Works of North Kansas City have built steel barges of the type listed in the first line (T. 2840) for the general trade. I do not know of any specific barges, but I know they have built a number of barges and pontoons. Their representative said they had. I didn't ask him for any instances. We did none of the buying for the Consumers Sand Company. They had their own purchasing agent, so we did not recommend where they bought any of their equipment. We had nothing to do with the buying at all (T. 2841). We did not recommend the people from whom they bought. That was up to the purchasing agent. This steel barge would be a dredge boat. I based my opinion that a steel barge of that type and cost would be sufficient to carry the dredging material upon the boats I have seen and boats that can now be seen on the Missouri River at Kansas City. Most of the pumping equipment existing on the Missouri River at the present time is larger than this. It is in excess of 12-inch equipment. Woods Brothers have some equipment and the Government has some equipment. The Government equipment would not be available to private individuals. Woods Brothers at Lincoln, Nebraska, have [fol. 1934] equipment which is available (T. 2842). It is now at Kansas City. It is larger than 12 inch. I do not recall the exact size. I have no idea what that equipment of Woods Brothers cost. I might say that after I finished this exhibit I gave a copy of it to Lee Metcalf, the engineer of Woods Brothers, to check over, and he checked it and said the estimate was correct (T. 2843). In preparing Government Exhibit No. 130 I assumed that the pumping dredge would be out in the river. I did not assume any particular place. I allowed sufficient pontoons and pipe to take it well out in the river. The route I chose was following north of the storage and warehouse company, and coming into the property from that direction. As to whether I contemplated coming entirely over land of respondent, I cannot answer that question very well without looking at a map (T. 2846). I have made no allowance for right-of-way over private lands. Whether we could come over land of respondent or not, I would have to look at a map in order to

answer that question. When we made our computation, we looked at a map. I don't remember what our conclusion was as to whether we could come over the land of respondent without crossing land of anyone else, but I made no allowance for right-of-way over any other person's land (T. 2847). From my experience there might be leakage or blowouts in pipe lines of this sort pumping water and sand. The damage to the property of others would be very slight, but there might be some disturbance. I have made no computation that included that element. I estimated that the pipe would have to be 40 feet above the river. I had in mind the elevation of the river at the point where we would do the pumping (T. 2848). I can't give that elevation now, except that we concluded that 40 feet *feet* from the level of the land to the level of the river would be sufficient. We concluded that the land was 40 feet higher than the level of the [fol. 1935] river (T. 2849). I figured that the 40 feet would be the maximum elevation between the river and the pipe line. We estimated that the pipe would have different grades. In other words, where you are crossing under the railroad track, you would have to have sags in the pipe. I estimated that it would go under the railroad track. As to where the elements of cost for the excavation under the railroad track are included, we figured $5,000 to put in the pipe line, move the boat, move the dredge, set it up, and install the pipe. I cannot answer as to how many times we would go under the railroad track without looking at the map (T. 2850), and I made no estimate of what respondent would have to pay to the owners of the railroad tracks for the right to go under that track. I have not taken into consideration that these railroads would refuse entirely to permit the excavation under their railroad tracks for a pipe line of this sort. Some other provision would have to be made. If the railroads refused permission, it couldn't be done the way I have outlined in my estimate, which is Government Exhibit No. 130. There would have to be some increase in cost there due to elevating the pipe, if it was necessary. If the railroads refused to let me go under or over the track and the Stock Yards Company had no right-of-way which was available, it would have to be done some other way.

I estimated there would be 20 per cent of solids in the material that would be pumped, and the balance would be water (T. 2851). We would drain off the water through

the ditches that were already there. We would build dikes, and have included in the estimate on page 5, Item 11, ditching and diking, $1,500. We estimated a dike at least two feet high. That is the average height of the dike above the finished excavation of the ground. The length would be the length of the land that we are filling. I can't give you in [fol. 1936] detail the length of the dike we had in mind in making the estimate of $1,500 (T. 2852). Of course, the cost of making the dike would depend upon the length of it. In making my estimate, I considered that all the other property surrounding respondent's property, such as the packing houses, railroad tracks, and all other land and property thereon not owned by respondent would be the same as it is now. The ditching included in the estimate of $1,500 would be the small ditching necessary to carry this water away. It would be incidental to the fill of the land. I do not have the detail now of the cost per foot of length of dike. I do not know that cost. The cost per lineal foot is important to get at the cost of the whole dike and also the length of the dike is important (T. 2853). I do not now know either of those. I have not that detail.

In connection with page one, I said that the experience with the Consumers Sand Company was brought into use as a foundation for this information. I did not say that I relied on it entirely. That was the only direct experience I ever had in operations of this sort. Any items in this exhibit that reflect my personal knowledge as obtained from direct experience would have to be derived from that experience. I did not consult any practical operators at St. Joseph, Missouri, in connection with the preparation of Government Exhibit No. 130 (T. 2854).

Cost of Laying Railroad Tracks

Government Exhibit No. 131 is merely a hypothetical case of laying track. I am not contending that the figures shown represent the actual cost of anyone in St. Joseph for laying a mile or more of track (T. 2833). I never laid any [fol. 1937] track in St. Joseph and do not know what it cost anyone in St. Joseph to lay a mile of track.

Relation of Cost of Fill to Value of Land

Sign Board Hill in Kansas City runs to a peak of about 50 feet (T. 2854). It tapers down to about 10 or 15 feet.

That contains two levels of rock and a level of shale, which is a more or less rocky formation.

Redirect examination:

With respect to the operations considered in the Contractors Manual, the manual states in considerable detail the basis upon which the figures have been made up of costs, taking the usual construction hazards into consideration, not the unusual. It takes into consideration all the factors usually met with in construction work. I do not know anything as to the necessity of climbing a steep hill in connection with the filling of the stockyard property by excavation and hauling (T. 2856). In excavating and filling where you are taking earth from a hill, you do not have to go on top of the hill to do the excavating. The excavating is usually done at grade, that is, the street or road grade.

In connection with the estimate of hydraulic filling, the [fol. 1938] men with whom I consulted were in Kansas City. Those men operate hydraulic dredges all over the country. In connection with the excavation of Sign Board Hill, we found that by selling the rock we would decrease the cost of excavation (T. 2857). The price we would derive from the sale of the rock would decrease the cost of excavating the rock, but did not more than pay for removing it. The cost of excavating the rock would be slightly more than the rock would sell for. With reference to the shale, we estimated installing a brick plant and selling the brick and the cost of the shale would be equal to the cost of dirt excavation. The fact is that the total cost of the operation didn't warrant our doing it (T. 2858).

At this point the following Governments exhibits were received in evidence:

Government Exhibit No. 132, certain pages from the Annual Report of the St. Joseph Belt Railway to the Interstate Commerce Commission for the year 1929.

Government Exhibit No. 133, certain pages from the Annual Report of the St. Joseph Belt Railway to the Interstate Commerce Commission for the year 1930.

Government Exhibit No. 134, certain pages from the Annual Report of the St. Joseph Belt Railway to the Interstate Commerce Commission for the year 1931.

Government Exhibit No. 135, printed book which is entitled "Abstract of Evidence and Brief on behalf of the St. Joseph Belt Railway Company before the Interstate Commerce Commission in Finance Docket No. 3906, Excess Income of St. Joseph Belt Railway Company".

[fol. 1939] **Surrebuttal Testimony of Respondent**

CAPTAIN ROBERT J. STEWART, a witness called by respondent, being first duly sworn, testified as follows:

Direct examination:

Land Values

Cost of Filling Land

I reside in St. Joseph and am President and General Manager of the Pioneer Sand Company which is engaged in the business of dredging sand out of the river and selling the sand. I have had a little over 25 years of continuous experience in dredging the Missouri River. We have pumped sand as much as 10 miles above St. Joseph and as much as five miles below St. Joseph and over the intervening territory. I am personally acquainted with Lee Metcalf referred to by Mr. Henrici this morning (T. 2882). I have [fol. 1940] had contact with him in a business way. In my estimation, Lee Metcalf is not a practical dredger. To my knowledge he does not have any practical experience along the line indicated by the job which was estimated in Government Exhibit No. 130.

I am familiar with conditions existing on the Kaw River in respect to dredging. I have been on that river many times. I have watched dredging operations for days at a time. I have had occasion to personally observe the difference in operations on the Kaw River as compared to operations on the Missouri River (T. 2883). I would not say that dredging operations on the Kaw River are comparable to those on the Missouri River at or about St. Joseph. The operation, the method of procuring sand, in other words, is practically the same, but the condition of the material, I mean it is easily obtained, for the reason, that the stuff that is contained in the Missouri River is harder, and it has more mud and silt and fine sand, that is 9/10 of the bottom of our river, or a greater percentage

than that, and in the Kaw River we don't have that. In the Kaw River, the bed is all sand, and there is very little mud or fine sand, that is hard, it packs, and it is necessary in the Missouri River, it became so, to put a cutter on our dredge boat, that we might cut down through this hard stuff, to get down to the body of the sand, which might lay as much as 8 or 9 or 10 feet below the bottom of the top of the river bed. That is an increased operating difficulty which we encounter on the Missouri River, which is not encountered to that extent on the Kaw River (T. 2884). Another difference is the difference in floating equipment. We have dredging boats, and we have had, since I have been here, and we haven't had a dredge boat of less length than 80 feet, while on the Kaw River they quite frequently [fol. 1941] have dredge boats that will be 35 or 40 feet long. This is occasioned by the flow of the water, a boat of such short dimensions being anchored out in the stream against the flow of the water which will sometimes go up to 7 or 8 miles per hour puts such a strain on the line that it tends to pull the head of the boat down and will cause it to go under, due to the fact that it has not enough bouyancy or length to hold it level or more stable on the water. I noticed in Government Exhibit No. 130 on page two that the size of the dredge boat that would be used for the dredging machinery was 25 x 40 x 3 feet 6 inches. From my experience, that equipment may do it, but I would not want to try it. I would not start out with that equipment, if I had my choice. As a practical operating man on the Missouri River, I would not use equipment of that length. The width is all right, but the depth is not enough (T. 2885). I use a length of 85 feet. I used that length because it is more stable and more secure. I use that length of boat at or about St. Joseph, Missouri. As to whether the current has anything to do with the size of the boat, in the Missouri River we have as much as 7 or 8 miles flow of water where our suction pipe would not go down, and we would have to load it with grate bars or chains that we might give if more weight. In the Kaw River they have a flow of water of perhaps two or three miles an hour. That difference in current occasions greater hazards and greater operating expense. There is a difference in the depth of the two rivers. The Missouri River is supposed to be

navigable (T. 2886) and the Kaw is not. The Kaw River has a depth during the operating season of some 2, 4, or 5 feet, while in the Missouri River we pump sand as much as 40 and 45 feet. That is an increased hazard of operation which would increase expenses (T. 2887). The Missouri River is recognized as more hazardous than the [fol. 1942] Kaw River by the Marine Underwriters. Near and Gibbs of Cincinnati, Ohio, are underwriters of marine insurance and we have made application to them to underwrite or insure our equipment. We gave them some 20 plants on the Kaw and Arkansas Rivers and 6 plants on the Missouri River, giving them our experience over a period of 7 years, and they refused the insurance, due to the Missouri River.

I am acquainted with most of the companies in this part of the country as far east as Pittsburgh, Dubuque, Iowa, St. Louis, and Paducah that construct steel barges or dredge boats of the type that would be required in dredging operations at or about St. Joseph, Missouri. I never heard of the Standard Steel Works of North Kansas City as a builder of barges or dredge boats of that type. We have had several steel pieces built and I have never asked them yet to give us an estimate on the cost of construction because we never knew that they were in that business.

I am very familiar with the Consumers Sand Company (T. 2888). They never had any operations on the Missouri River. I am positive of that.

I heard the testimony of Mr. Henrici this morning and have examined Government Exhibit No. 130. Based upon my knowledge of conditions existing at or about St. Joseph, assuming that all the other adjacent property is exactly as it is now (T. 2889), it would be practical to pump material from the Missouri River direct to the stockyards area in the manner contemplated by Government Exhibit No. 130. By that I mean I would do it if that was necessary, but if they would permit me to use any other method, I would not. I would haul it there. The reason I would haul it rather than pumping it is because the depth of the fill is not sufficient to warrant that kind of an operation. You [fol. 1943] would be continually moving your pipe line (T. 2890) which would mean the ceasing of producing sand during that period. Were you making a fill of some 10

to 30 feet, that would be quite different. You could establish your pipe line and continue to produce, but over such a thin amount, I would not think that would be a practical way of doing it. I would prefer hauling it (T. 2891). If I had the choice of methods, I would use the hauling method.

In respect to the operation contemplated by Government Exhibit No. 130, it would be necessary to take care of the water that would be released from the pipe. As to the effect of that on the practicability of the operation, I believe the expense you would be put to would be to excessive for the amount of the material you would be putting in place. 80 per cent of it would be water at least, and 20 per cent solid. I think it would be a considerable task to take care of 80 per cent of water on a flat surface as that is (T. 2892). Adjacent to the stockyards property there are substantial improvements. That amount of water might be an element of damage to those improvements. Adjacent property owners might seriously object to having their land flooded with water. Depending on the individuals, that might not be a very far stretch of the imagination. Some might object more strenuously than others. I don't know that undermining of railroads adjacent to the place where the land was being filled would be one of the hazards of operation (T. 2893).

I do not know of any adequate private equipment on the Missouri River to handle a job such as is contemplated by Government Exhibit No. 130. I know all the various types of equipment that are on the Missouri River from here to St. Louis.

[fol. 1944] Cross-examination:

The points at which I have observed dredging are Topeka, Lawrence, Turner, and the vicinity of Kansas City, including the Stewart Sand Company, Muncie Sand Company, the American Kansas Bauersock at Lawrence, Kansas, the Kansas Sand Company, the Topeka Sand Company, the Consumers Sand Company, and the River Sand Company. I was not connected with the Stewart Sand Company in Kansas (T. 2894). I know that company very well. I have known their President, Mr. Frank Lauhead, for the past 12 or 14 years and worked with him considerably but not for him. When I say that I have pumped sand in the

Missouri River to a depth of 40 to 45 feet, that does not mean that all the sand is pumped from that depth. That is an extreme. In hydraulic filling I would say that where the filling is 3 to 3½ feet that the sand would flow out on both sides of the pipe a distance of perhaps 12 to 15 feet in leveling off (T. 2895). With reference to the disposition of the water that comes with the sand which would make it too expensive in a fill of the stockyards property, the method of distribution I had in mind excavating a ditch through which to flow the water back. I had in mind the existence of ditches and sewers already in place, but I don't think you could use your sewers to any advantage because there would be a portion of the sand that is pumped out of the river that would be carried with the water, and the sewer is so built that I think this finer stuff when it went through would block it up. I know all the ditches down there, but I have not examined them with the thought in mind as to whether they could be used. I think they could be used by getting to them, and I am not quite sure that they would have to be kept open (T. 2896).

[fol. 1945] Redirect examination:

In addition to the ditch, there would have to be a dike or levee. That would certainly have to go entirely around the area that was being filled because water will seek its own level.

Recross-examination:

A dike is customary in hydraulic filling in a fill of that nature. If the fill is being made in an area lower than surrounding land, you would not need a dike, but where you are filling above surrounding land, it is customary to provide a dike (T. 2897).

Redirect examination:

If you are filling a portion of what is now the stockyards to a depth of approximately 3 feet and bringing it up to the level of the land which is adjacent to it, you would need a dike. In answering the previous question, I construed the meaning to be that if you were pumping into a fill on a hill, with a hill on both sides of you, you would not need

a dike because you have a dike with the hill. That is what I meant by the answer I made (T. 2898).

[fol. 1946] STIPULATION

The foregoing, together with Examiner's Exhibit No. 100, Government Exhibit- Nos. 101 to 143, inclusive, and Respondent's Exhibit- Nos. 100 to 154, inclusive, a portion of which are physically incorporated in this abstract, is a fair and satisfactory abstract of the evidence introduced in the rehearing of the above-entitled proceedings, provided however, that in instances where exhibits have not been physically included in this abstract, they may be referred to by either party in the same manner as though physically incorporated herein. It is understood that in all cases where an objection was made and overruled, that an exception was preserved whether the objection and exception are shown in this abstract.

Seth Thomas, Solicitor, United States Department of Agriculture; J. S. Bohannan, Assistant to the Solicitor, Attorneys for the Government. Ross Dean Rynder, William N. Strack, Attorneys for Respondent.

[fol. 1947] IN UNITED STATES DISTRICT COURT

[Title omitted]

ORDER APPROVING NARRATIVE STATEMENT OF EVIDENCE—Filed Sept. 26, 1935

This cause coming on for hearing on the motion of petitioner (appellant) for an order approving the narrative statement of evidence filed herein and certifying original exhibits to the Supreme Court of the United States, and the court being advised in the premises, it is

Ordered:

1. That the narrative statement of evidence filed herein, and which, with the original exhibits offered in evidence and to be certified separately to the Supreme Court of the United States, is a true and complete statement of all the

evidence which is essential to the decision of the questions presented by the appeal, be and it is hereby approved.

2. That the Clerk of this court, in preparing the transcript of the record on the appeal herein to the Supreme Court of the United States, shall certify to said court all of the condensed narrative statement of evidence and the exhibits specified in the stipulation of counsel herein; that said exhibits shall be certified and forwarded by the Clerk of this court to the Supreme Court of the United States as original exhibits, not as part of the transcript of record [fol. 1948] but separately therefrom, and that any party hereto may refer to said original exhibits in their briefs and arguments with like effect as though they were printed as part of the record.

Kimbrough Stone, United States Circuit Judge. Albert L. Reeves, United States District Judge. Merrill E. Otis, United States District Judge.

September 26, 1935.

[File endorsement omitted.]

[fol. 1949] IN UNITED STATES DISTRICT COURT

[Title omitted]

SUPPLEMENTAL STIPULATION CONCERNING CONDENSED NARRATIVE STATEMENT OF RECORD AND ORIGINAL EXHIBITS TO BE TRANSMITTED TO THE UNITED STATES SUPREME COURT—Filed Sept. 26, 1935

A stipulation having been entered into, dated September 11, 1935, by and between counsel for petitioner and counsel for the United States of America and the Department of Agriculture, concerning the condensed narrative statement of record and original exhibits to be transmitted to the United States Supreme Court in the above entitled case, said stipulation is now hereby supplemented by adding thereto the following:

It is further stipulated that the Clerk of this court, in preparing the transcript of record on appeal in the above entitled cause to the Supreme Court of the United States,

shall certify to said court, in addition to the original exhibits designated in said stipulation of September 11, 1935, a further original exhibit offered in evidence before this court, being a certified copy of a proceeding known as "United States of America, Before the Secretary of Agriculture, Bureau of Animal Industry, Docket No. 344, Secretary of Agriculture v. Union Stock Yards Company of Omaha, Ltd., Respondent, Proceedings, Findings of Fact [fol. 1950] and Order," entered by the Acting Secretary of Agriculture, R. W. Dunlap, on the 1st day of March, 1933; that said document shall be certified and forwarded by the Clerk of this court to the Supreme Court of the United States as an original exhibit, not as part of the transcript of record but separately therefrom; that any party hereto may refer to said original exhibit in their briefs and oral arguments with like effect as though it were a printed part of the record.

Wendell Berge, Counsel for the United States of America and Secretary of Agriculture. R. E. Culver, Wm. N. Strack, R. D. Rynder, Counsel for Petitioner.

September 18, 1935.

[File endorsement omitted.]

[fol. 1951] IN UNITED STATES DISTRICT COURT

[Title omitted]

PRÆCIPE FOR TRANSCRIPT OF RECORD—Filed Sept. 26, 1935

To the Clerk of the District Court of the United States for the Western District of Missouri, St. Joseph Division:

Please prepare a transcript of record in the above entitled cause on appeal to the Supreme Court of the United States, including therein the following:

1. Petition herein of St. Joseph Stock Yards Company against United States of America and Secretary of Agriculture, filed May 15, 1934, which should include Exhibit A attached thereto.

2. Answer of the United States of America and the Secretary of Agriculture.

3. Stipulation with respect to narrative statement of evidence and certification of original exhibits to the Supreme Court of the United States, dated September 11, 1935.

4. Supplemental stipulation with respect to narrative statement of evidence and certification of original exhibits to the Supreme Court of the United States, dated September 18, 1935.

5. Narrative statement of evidence.

6. Opinion of the District Court, dated May 1, 1935.

7. Final decree of the District Court, dated May 1, 1935.

8. Order staying final decree of District Court, dated May 9, 1935.

9. Notice of petition for supplemental findings of fact and conclusions of law, dated May 22, 1935.

[fol. 1952] 10. Acknowledgment by Solicitor General of the United States of notice of petition for supplemental findings of fact and conclusions of law, dated May 22, 1935.

11. Petition for supplemental findings of fact and conclusions of law, dated May 24, 1935.

12. Proposed order permitting filing of petition for supplemental findings of fact and conclusions of law but refusing to make said findings, dated May 24, 1935.

13. Letter of Honorable Merrill E. Otis, District Judge, dated June 20, 1935, denying said petition for supplemental findings of fact and conclusions of law.

14. Notice of petition for appeal, dated May 21, 1935.

15. Acknowledgment by Solicitor General of the United States of notice of petition for appeal and of copy of petition for appeal, assignment of errors, order allowing appeal, and order granting supersedeas, dated May 22, 1935.

16. Petition for appeal, dated May 24, 1935.

17. Order allowing appeal, entered May 24, 1935.

18. Order granting supersedeas, entered May 24, 1935.

19. Bond on appeal, approved May 24, 1935.

20. Bond as security on appeal, approved May 24, 1935.

21. Assignment of errors, dated May 24, 1935.

22. Statement as to jurisdiction of United States Supreme Court on appeal, filed May 24, 1935.

23. Notice of appeal pursuant to rule 12, paragraph 2, of the rules of the Supreme Court of the United States, addressed to the Solicitor General of the United States and the Assistant Attorney General of the United States.

24. Acknowledgment of notice of appeal, dated May 27, 1935.

25. Citation on appeal, entered May 24, 1935.

26. Notice of appeal pursuant to rule 12, paragraph 2, of the rules of the Supreme Court of the United States, addressed to the Attorney General of the State of Missouri, and acknowledgment thereof, dated May 29, 1935.

27. Acknowledgment of citation on appeal by Solicitor General of the United States, dated June 7, 1935.

28. Consent to entry of order enlarging time within which to settle the record, dated June 15, 1935.

[fol. 1953] 29. Order enlarging time within which to settle the record, dated June 19, 1935.

30. Consent to order enlarging time within which to settle the record, dated July 11, 1935.

31. Order enlarging time within which to settle the record, dated July 18, 1935.

32. Consent to order enlarging time within which to settle record, dated August 5, 1935.

33. Order enlarging time within which to settle the record, dated August 15, 1935.

34. Consent to order enlarging time within which to settle the record, dated September 6, 1935.

35. Order enlarging time within which to settle the record to October 18, 1935.

36. Notice to the United States and the Department of Agriculture of appearance before court for entry of order approving narrative statement of evidence and original exhibits to be transmitted to the Supreme Court of the United States on this appeal, dated September 18, 1935, and acknowledgment of service thereof.

37. Order approving the narrative statement of evidence and providing for certification of original exhibits to the Supreme Court of the United States, entered September 26, 1935.

38. This præcipe for transcript of record.

R. E. Culver, Wm. N. Strack, R. D. Rynder, Counsel for Petitioner (Appellant.)

Service of the foregoing præcipe and receipt of a copy thereof are hereby admitted and acknowledged upon September 18th, 1935.

Hugh B. Cox, Counsel for United States of America and Secretary of Agriculture.

[File endorsement omitted.]

[fol. 1953a] IN UNITED STATES DISTRICT COURT

[Title omitted]

STIPULATION AS TO NOTICE OF APPEAL—Filed Oct. 4, 1935

It is hereby stipulated, by and between counsel for the respective parties, that the attached copy of notice of appeal, pursuant to rule 12, paragraph 2, Rules of the Supreme Court of the United States, is a true and correct copy of the notice of appeal herein, which was served upon the Solicitor General of the United States on May 27, 1935, service thereof having been acknowledged by him on said date.

It is further stipulated, by and between counsel for the respective parties, that the court or a judge thereof may enter herein the order, copy of which is hereto attached) respecting inclusion of said notice of appeal in the transcript of record to be certified by the clerk of the United States District Court to the clerk of the Supreme Court of the United States.

Hugh B. Cox, Counsel for the United States of America and the Secretary of Agriculture. Wm. N. Strack, R. D. Rynder, Counsel for Petitioner (Appellant).

September 30, 1935.

[File endorsement omitted.]

[fol. 1953b] IN UNITED STATES DISTRICT COURT

[Title omitted]

ORDER RESPECTING INCLUSION OF NOTICE OF APPEAL IN RECORD—Filed Oct. 4, 1935

It appearing that the notice of appeal herein, pursuant to rule 12, paragraph 2, Rules of the Supreme Court of the

United States, cannot be located in the files of the clerk of the United States District Court, Western District of Missouri, St. Joseph Division, and that said notice of appeal should properly be a part of the transcript of record to be certified to the Supreme Court of the United States in connection with the appeal herein, and that the parties have stipulated that the attached copy of notice of appeal shall be included in the transcript of record to be certified to the Supreme Court of the United States:

It is ordered that, in making up the transcript of record to be certified to the Supreme Court of the United States in the appeal in this case, the clerk of the United States District Court shall include therein this order, the stipulation herein referred to, and the attached notice of appeal.

Merrill E. Otis, United States District Judge.

October 4, 1935.

[File endorsement omitted.]

[fol. 1953c] In United States District Court

[Title omitted]

Notice of Appeal

To Honorable Stanley F. Reed, Solicitor General of the United States, and Honorable Harold M. Stephens, Assistant Attorney General of the United States, Washington, D. C.:

Pursuant to Rule 12, paragraph 2, rules of the Supreme Court of the United States, you are hereby served with copies of the petition for appeal, order allowing appeal, assignment of errors, and statement as to jurisdiction in the above entitled cause.

Your attention is directed to the provisions of Rule 12, paragraph 3, reading as follows:

"Within 15 days after such service the appellee may file with the clerk of the court possessed of the record, and serve upon the appellant, a typewritten statement disclosing any matter or ground making against the jurisdiction of this court asserted by the appellant. There may be

included in, or filed with, such opposing statement, a motion by appellee to dismiss or affirm. Where such a motion is made, it may be opposed as provided in Rule 7, paragraph 3."

William N. Strack, Ross Dean Rynder, Counsel for Appellant (Petitioner).

[fol. 1954] In United States District Court, Western District of Missouri, St. Joseph Division

In Equity. No. 245

St. Joseph Stock Yards Company, Petitioner,

vs.

United States of America and the Secretary of Agriculture, Defendants

Before Stone, Circuit Judge, and Reeves and Otis, District Judges

Memorandum Opinion and Findings of Facts—Filed May 1, 1935

Per Curiam:

In 1929, the Acting Secretary of Agriculture initiated an inquiry into the rates being charged by petitioner for various services at its stockyards at St. Joseph, Missouri. After full hearing, the matter was finally argued and submitted, in May, 1930. In February, 1931, and before decision, petitioner filed an application to reopen the case because of changes in general economic conditions affecting its business. The Secretary denied this application and (July, 1931) entered an order fixing rates. An action to enjoin these rates resulted in determination by this Court that the case should have been reopened (St. Joseph Stock Yards Co. vs. United States, 58 Fed. (2d) 290). Thereafter, the Acting Secretary reopened the case generally and hearing was had from January 10, to February 16, 1933. On January 6, 1934, the Acting Secretary forwarded proposed findings, conclusions and order to petitioner with a statement that exceptions thereto might be filed by Febru-

ary 2, 1934. On February 2nd, petitioner filed exceptions and also filed an application again to reopen the case because of change in conditions since the close of the hearing on February 16, 1933. In May, 1934, the Secretary de- [fol. 1955] nied the application to reopen the case and entered an order fixing rates. This action challenges both the denial of the application to reopen and the order fixing rates.

I

Application to Reopen

Obviously, if the case should be reopened for further evidence before the Secretary, no decision here upon the rate order is in place. Therefore, the propriety of reopening the case will be considered first.

The changes relied upon in the application to reopen as being changes of an unusual character affecting the business of this petitioner are set forth therein and are as follows: (1) effect of the Agricultural Adjustment Act (May 12, 1933, U. S. C. A. Title 7, Sections 601-619); (2) effect of National Industrial Recovery Act (June 16, 1933, U. S. C. A. Title 15, Sections 701-712); (3) effect of action of the President under the Gold Reserve Act (January 30, 1934, U. S. C. A. Title 31, Sections 440-446); (4) showing of actual business experience for calendar year 1933.

(1) The argument as to effect of the Agricultural Adjustment Act is that the announced policy of the Secretary is to reduce the number of hogs which he has power to do under the processing tax powers. That this results in 25 percent per annum reduction hereafter and vitally influences the volume of hogs coming to this market. As to cattle and sheep the contention is that various efforts are being made to include them within the power of similar reduction by the Secretary. Any virtue in this contention must depend upon the relative permanency of the order as to hogs—the matter as to sheep and cattle is entirely speculative. In fact, the permanency of the hog order is purely speculative.

This ground is solely concerned with the volume of business, by that meaning the volume of receipts of livestock at complainant's yards. The Secretary used an estimated volume as a rate factor (page 160). Therein he states the numbers each of cattle, calves, hogs and sheep used in his

[fol. 1956] factor. A comparison of these figures with those of actual receipts (page 157) for the six years, 1927-1932, inclusive, reveals that the Secretary's figures are very conservative. As to hogs, his figure is only 126,010 above the lowest receipt (in 1932) during the above six year period. In view of the above conservatism of the Secretary, it is by no means clear that such estimates are so far wrong as to be influenced materially by the operation of this Act.

Because of the speculative character as to the occurrence or permanency of the suggested action by the Secretary under the Act and because of the conservative estimate of volume of receipts used by the Secretary, we think this ground insufficient to warrant reopening of the case.

(2) The contention as to the National Industrial Recovery Act is that it has resulted in a substantial raise in wages of employes. Also it is alleged that existing labor and economic conditions have had a like effect. The permanency and the extent of these effects are, obviously, uncertain and doubtful.

(3) The effect of the Gold Reserve Act action, both on increase in operating expenses and in an estimated cost of reproduction new less depreciation of complainant's structures seems too speculative to merit consideration.

(4) As to the estimated effect of these rates if applied to 1933 business, the difference between the amount which is claimed would have been earned thereunder and the amount found by the Secretary to constitute the reasonable net return is too small to be taken as a guide for a rate. It is to be expected that any business will have annual fluctuations. Rates are not based upon the result of the business of any one year alone but upon what is estimated as being the average business over a proper term of years, the future being gauged by the past. The past years here taken by which to gauge the future include [fol. 1957] six years, two of which were deeply affected by the depression. The experience before the Secretary was up to ten days before the date of the hearing.

All of the above contentions involve effects upon the business of petitioner which are entirely uncertain and unpredictable with any degree of accuracy. They are being urged in connection with the rates in the order here

challenged. Only actual experience under such rates can furnish any real criterion or guide as to the effects urged. This experience should be obtained by practical test. No sufficient showing appears for not making such test to determine these matters which are of such doubtful and uncertain influence. The case should not be reopened at this time. If actual experience hereafter for a proper period under the rates fixed by the order reveals sufficient reasons, the order can then be challenged through the proper channels.

II

Confiscatory Character of Rate Order

1. Powers of Secretary

Numerous attacks are made upon the power of the Secretary to determine various elements of fact entering into a decision upon the rates. It is unnecessary to discuss separately any of these. The power of Congress to regulate the rates at stockyards through the Packers and Stockyards Act has been sustained (Stafford vs. Wallace, 258 U. S. 495; Tagg Bros. vs. United States, 280 U. S. 420). That Act empowers the Secretary of Agriculture to determine rates. Obviously, such designation carries all powers necessary or proper to execute the authority. Vital to such execution is the investigation and determination of all fact-matters pertinent to rates to be regulated. The contentions here have to do only with such matters.

[fol. 1958] 2. Confiscation

Scope of Review.—At the very threshold is the preliminary question: What is the scope of this review: Is the petitioner entitled to the independent judgment of this court as to the law and the facts upon the record made before the Secretary or is this court bound to accept the findings of fact made by the Secretary if they are supported by substantial evidence?*.

* A third alternative is that where a constitutional issue is involved the reviewing court must accord the petitioner a hearing de novo. In this case, however, there was no request for such a hearing and no additional evidence was offered before this court. The Supreme Court said in

If violation of the Constitution were not charged there would be no doubt but that in the review here inquiry as to facts should go no further than to determine whether the facts found are substantially supported. Tagg Bros. [fol. 1959] vs. United States, 280 U. S. 420, 443, 444. But the debate, whether when the issue of confiscation is raised the court independently should make findings, a debate not yet decided by the Supreme Court as to cases arising under the Packers and Stockyards Act, goes on. The Supreme Court expressly passed the question without decision in the Tagg Bros. case. 280 U. S., l. c. 443.

The question shoult be decided and it should be decided in this case. The court ought not to exceed its jurisdiction and it ought not invade the jurisdiction of an administrative agency. Moreover, it is greatly to be desired that a clear guide should be set up for use in future cases of this character.

The latest decision of this question was by a three judge court for the District of Nebraska. Union Stock Yards Co. v. United States, 9 Fed. Supp. 864. The case was similar to this. The principal issue was that of confiscation. In the

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Tagg Bros. vs. United States, 280 U. S. 420, 443, that—"a proceeding under Section 316 of the Packers and Stockyards Act is a judicial review, not a trial de novo." Compare, however, the opinion of the Supreme Court in Crowell vs. Benson, 285 U. S. 22, in which it was ruled that a hearing de novo rightfully was demanded by the litigant claiming infringement of constitutional rights. But see the dissenting opinion of Brandeis, J., l. c. 65. Crowell vs. Benson was not a case arising under the Packers and Stockyards Act.

The scope of judicial review in a case of this character does, of course, involve other matters than a consideration as to whether the findings made by the administrative agency are supported by substantial evidence. These other matters include inquiry: (1) whether the statutory procedure was followed by the administrative agency; (2) whether the order made is supported by the findings made; (3) whether erroneous rules of law were followed to reach the findings. Tagg Bros. vs. United States, 280 U. S. 420; Interstate Commerce Commission vs. Illinois Central Railroad Co., 215 U. S. 452, 478; Morgan vs. United States, 8 Fed. Supp. 766, 768.

opinion by Circuit Judge Woodrough (Circuit Judge Gardner and District Judge Munger concurring) the court said (l. c. 873): "Our judicial function does not go beyond the decision of the constitutional question whether the rates fixed are confiscatory. *His (the Secretary's findings of fact supported by substantial testimony are not subject to review.*"

[fol. 1960] That the court is required to exercise its independent judgment as to the facts was the view expressed in the opinion of a three judge court in Denver Union Stockyards Company v. United States, 57 Fed. (2d) 735, 739.

In St. Joseph Stockyards Company v. United States, 58 Fed. (2d) 290 the question was not decided but in a footnote to the opinion (l. c. 296) it is said that a majority of the court subscribed to the first and a minority to the second of the two theories stated.

A three judge court in Morgan v. United States, 8 Fed. Supp. 766, stated the two theories (l. c. 769) but did not find it necessary to choose between them.

No other cases have arisen or been decided under the Packers and Stockyards Act.

True it is that the Supreme Court long since ruled that where an order of a rate regulating body, acting under state authority, is challenged as confiscatory, and hence violative of the due process clause of the Fourteenth Amendment, the reviewing federal court must exercise its independent judgment as to facts and law. Ohio Valley Co. v. Ben Avon Borough, 253 U. S. 287.* Upon first thought it might seem

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* When it is said that an independent judgment must be reached by the court, it is meant that the court's findings must be determined by the weight of the evidence and not by a consideration as to whether the findings of the administrative agency are supported by substantial evidence or are arbitrary. A finding may well be supported by substantial evidence and still be against the weight of the evidence. The advocates of each of the two theories, (1), that the court must give its independent judgment on the record made and that, (2), it must accord a de novo hearing, agree that the findings of the administrative agency should be looked upon as presumptively correct. That is far less, however, than an acceptance of the findings of the administrative agency as conclusive if they are supported by substantial evidence or are not arbitrary.

that this decision is determinative of the present question. For the due process clause in the Fifth Amendment is identical in significance with the due process clause in the Fourteenth Amendment. Closer observation, however, reveals an essential distinction between the Ben Avon Borough case and a case where rates are fixed by an administrative agency of the United States whose findings of fact are made conclusive by statute.

Findings of fact made by the Secretary of Agriculture in a proceeding under the Packers and Stockyards Act are made conclusive by statute. By that Act the laws pertaining to orders of the Interstate Commerce Commission are made applicable to orders of the Secretary. Title 7, Sec. [fol. 1961] 217, U. S. C. The Interstate Commerce Act (Title 49, Sec. 16(12)) makes the findings of the Interstate Commerce Commission conclusive if supported by substantial evidence. Tagg Bros. v. United States, 280 U. S. 420, 440 (see footnote on p. 440).

If in a judicial review of an order of the Secretary his findings supported by substantial evidence are conclusive upon the reviewing court in every case where a constitutional issue is not involved, why are they not conclusive when a constitutional issue is involved? Is there anything in the Constitution, which expressly makes findings of fact by a jury of inexperienced laymen, if supported by substantial evidence, conclusive, that prohibits Congress making findings of fact by a highly trained and especially qualified administrative agency likewise conclusive, provided they are supported by substantial evidence?

[fol. 1962] The constitutional provision relied on is that (Art. III, Sec. 1) which provides that—"The judicial power of the United States shall be vested in one supreme court and in such inferior courts as the Congress may from time to time ordain and establish." The contention is that the phrase "judicial power" includes the exclusive power finally to decide all issues of fact in a case where a constitutional right is claimed to have been violated. But it is not contended that it includes that exclusive power where a constitutional right is not claimed to have been violated. A case of the latter character may be quite as important to the litigant as a case of the former character and may involve as much. No good reason can be given for this distinction. "In respect to the question * * * of the final-

ity to be accorded administrative findings of fact * * * I see no reason for making special exception as to issues of constitutional right, * * *", said Mr. Justice Brandeis (Mr. Justice Stone and Mr. Justice Roberts concurring) in his dissenting opinion in Crowell v. Benson, 285 U. S., 22, 80.

Upon this phase of the case our view coincides with that expressed by the learned justice of the Supreme Court as thus set out and with that of Circuit Judge Woodrough in Union Stockyards v. United States, supra.

We have not overlooked what was said in Crowell v. Benson, 285 U. S. 22, 60, that—

"In cases brought to enforce constitutional rights, the judicial power of the United States necessarily extends to the independent determination of all questions, both of fact and law, necessary to the performance of that supreme function. The case of confiscation is illustrative, the ultimate conclusion almost invariably depending upon the decisions of questions of fact. This court has held the owner to be entitled to 'a fair opportunity for submitting that issue [fol. 1963] to a judicial tribunal for determination upon its own independent judgment as to both law and facts.'"

But Crowell v. Benson was not a Packers and Stockyards case. In Crowell v. Benson it was ruled the administrative agency whose action was sought to be enjoined was not one whose findings of fact were made conclusive by statute. On the contrary it was expressly ruled that the statute conferring powers on the agency in question did not make his findings conclusive even if supported by substantial evidence. The case, therefore, is to be distinguished from a case in which findings are so made conclusive.

Beyond the above challenges to the power of the Secretary, the attacks upon the rates are aimed at the findings of fact pertinent to determination by the Secretary. There is no essential fact which escapes assault. This order shows careful consideration by the Secretary. Even careful consideration may involve error but it so rarely hives a swarm of errors as to be a fit target for shotgun charges intended to scatter all over it. Nevertheless, heavily burdened courts are compelled to examine every separate matter. The attacks here are upon (A) the rate base value, (B) the rate of return, (C) the experience test period, (D) the op-

erating expenses and (E) a particular finding as to "feed lot yardage" charge.

A. Rate Base Value

The challenges as to the rate base value include (1) the amount of land included, (2) the value of the land included, (3) the exclusion of certain structures, (4) the value of the included structures, (5) the exclusion of "pre-organization expenses" and "cost of financing", (6) the exclusion of "going concern" value; (7) the amount of "depreciation reserve".

[fol. 1964] (1) Amount of Land

The total ownership of land is 16,182,641 square feet (372.414 acres). Of this, 7,925,577 square feet (181.946 acres) is concededly not used and useful. Petitioner claims that all of the balance—8,257,064 square feet (189.556 acres)—is used or useful. Of this balance, the Secretary found 4,410,361 square feet (101.248 acres) used and useful. The dispute is over the difference of 3,846,703 square feet (88.308 acres). The loss in the rate base value by exclusion of this land is claimed to be $356,263.33. All of the land is considered (conveniently) in the evidence under various zones. The disputed land is found in Zones A, B, C, D, F, L, N, 1, 2 and 3.

In presenting this matter, petitioner classifies this disputed land under four headings: (a) the Transit House, (b) expansion land and (c) "a number of minor errors which are each small but total a substantial amount." While plaintiff separately discusses the "Anchor Serum Company plant," the substantial reason urged for its inclusion is for expansion purposes, therefore, it will be included under that heading.

(a) Transit House

This tract is a piece of land having 15,805 square feet occupied by a hotel called the Transit House. This is a commercial hotel patronized principally by shippers to the yard and by drivers of trucks carrying livestock to or from the yards. The contention is that this property should be included in the rate base value because it is a necessary convenience connected with the yards business. While the

yards are some distance from the hotel section of the city proper, there is no sufficient showing of any reason why other hotels and lodging houses could not be used by those having business with the stockyards. It would have to be shown very clearly that the business of the yards would be materially affected by the absence of a near by hotel [fol. 1965] before it could be said that the maintenance of such was so related to the yards business as to make it proper to be included in the rate for yard services. There is no such showing here and the exclusion thereof by the Secretary is sustained.

(b) Expansion Land

This land includes several tracts. The argument is that error exists in excluding the Anchor tract (349,449 sq. ft.); 722,160 sq. ft. in Zone C; 498,152 sq. ft. in Zone D; and 1,921,946 sq. ft. in Zone F.

The matter of including or excluding land or property held for business expansion in the rate base is the matter of who—the rate payers or the company—shall carry property which is not being used to produce the service paid for by the rate. Obviously, it may be proper and good business judgment may sometimes dictate provision for future expansion of the business. It is equally clear that, so far as the present rate payers are concerned, there must be a limit to the extent to which they can be compelled to pay for providing possible future facilities for future business. While a broad power and discretion must be left undisturbed in company management, yet even as to expenditures directly entering into the present service for which the now customer pays, this discretion is not beyond control (West Ohio Gas Co. vs. Public Util. Comm. (case 212), decided Jan. 7, 1935; Western Distributing Co. vs. Comm., 285 U. S. 119, 124, 126). It would seem that such control should be much more extensive where the expenditure has no part whatsoever in furnishing the service paid for. In fact, the general doctrine is that the rate base is made up of values used in furnishing the service (San Diego L. & T. Co. vs. Jasper, 189 U. S. 439, 446). Clearly, courts should somewhat critically examine values which do not enter into furnishing the service paid for and there should be no presumption in favor of including them in the rate base. The burden is upon the company to show that

such inclusion is proper. That showing must be that the properties held for future expansion are in themselves [fol. 1966] adaptable to such expansion and that there is probable need of them for that purpose in the not too distant future. Property not needed for present requirements may properly be acquired and held for reasons which do not concern the rate payer—for example, such acquirement is not unusual either for the purpose of future sale to gain the increased increment of value caused by establishment of the industry or for the purpose of protecting the business from competition (see Public Service Comm. vs. Great Northern Util. Co., 289 U. S. 130, 135, and Columbus Gas Co. vs. Comm., 292 U. S. 398, 407). Such purposes have nothing to do with business expansion, therefore, the company must establish that the land is held really for expansion. Even if held for expansion, there must be showing of a reasonable need for such purposes. This need is a matter of strong probabilities and not mere possibilities or hopes. We examine here such probabilities as shown by the evidence.

Expansion is urged upon two theories, each affecting different tracts. One is for use to sell to packing houses, the other is to care for increased volume or change in method of handling stock at the yards. The first reason applies to tract D, the latter reason to the other tracts.

Tract D.—For convenience, this tract will be considered first because the expansion reason urged is peculiar to it and for a particular use while the three other tracts are urged for another reason. The expansion purpose urged for Tract D is use as a site for a packing house. The adaptability and location of this tract for such use is evident. The original planning of this stockyards included sites for packing plants alongside the western side of the yards. That space is entirely occupied by three large packing plants (Swift, Morris and Hammond) except for tract D. The desirability, in fact necessity, of the proximity of packing plants to a stockyard business is clear. They are the main buying strength of such a market. All of these three companies are long established at these stockyards. [fol. 1967] The evidence reveals but one packing company (a relatively small one) which plaintiff has had in mind to bring to the yards. The evidence shows, also, that this company has established itself elsewhere and is procuring

its needs from these yards. There is no showing of any prospect of having this tract occupied by a packing plant. The exclusion of this value by the Secretary is not shown to be erroneous and his action is approved.

Anchor Serum Company Tract and Tracts in Zones C and F.—The Anchor item involves 349,449 square feet in Zone B. The reasons urged for including this value for expansion purposes are to provide for growth in volume of business and/or for additional space because of change in method of handling stock. These same reasons are the ones urged for including the two other tracts (Zone C and Zone F), therefore, it will save reiteration to here state the general situation shown concerning expansion for such reasons and any provision therefor in the allowances of the Secretary.

Some of this testimony was taken in 1929 at the first hearing, much more since then at the hearing 1933. At the first hearing it appeared that since 1915, 12.22 acres had been used (in Zone A) in expansion but that this had been offset (in Zone A) by abandonment of practically an equal area formerly used for Southern Cattle and for a ten foot dead line space adjoining that area (this was caused by a new regulation of the Department concerning shipment of Southern Cattle); that this abandoned area joined both the cattle and the sheep pens and would be the space of logical expansion for either. At the second hearing it appeared that none of various plans of expansion put forth at the first hearing had been proceeded with. As to some of these plans, it was alleged they had been suspended for financial reasons, although it appeared that dividends had been paid (though reduced). It also then appeared that since the first hearings the only expansions had been in [fol. 1968] eight pens and some loading chutes covering a total area of 5,250 square feet (4,000 in the former dead line space and 1,250 in vacant space near the exchange building). As to present business (last hearing) the testimony was: that on "peak days" the receipts of stock required repeated use of the pens—the main objection to this being some dissatisfaction by customers; that hogs were increasingly coming in by trucks necessitating smaller pens for the smaller loads; that an increase in receipts of stock and in mode of bringing it in (by trucks) would overtax the capacity of the yards. The president and general manager

testified he contemplated no immediate expansion and would not venture a prediction as to when such would be necessary.

The Secretary allowed (as feed lots) 890,879 square feet (over 20 acres) in Zone A (tract 8 of 103,723 square feet and tract 24 of 383,410 square feet) and Zone B (O'Connell feed lots of 403,746 square feet). Tracts 8 and the O'Connell lots adjoin the hog pens while Tract 24 adjoins the former Southern Cattle space and is located for use either in connection with the cattle or the sheep pens.

When we consider: that no need for immediate expansion is shown; that no definite plans for expansion exist; that expansion in recent years has been slight; that the abandoned Southern Cattle tract affords almost as much area for expansion (as to cattle and sheep) as the company has used for expansion for all purposes since 1915, and is the logical area for cattle and sheep expansion; that Tract 8 (about 3⅓ acres) adjoins the hog pens and is available for expansion there, it is impossible to conclude that any showing of reasonably near or definite need of any lands in Zones B, C or F exists—much less the clear showing required to overthrow the determination of the Secretary. In this situation, it is unnecessary to examine each of these three tracts separately. It may be added, however, that there could be no shadow of reason for regarding Zone F as having any relation to present or near future needs for expansion; and that, as to Zone C, an officer of the com-
[fol. 1969] pany testified he was loking to its use twenty to fifty years ahead and that such use would involve removal of the intervening Belt Line tracks now owned by that railway.

(c) Minor Tracts

The "minor errors" claimed are seven items which will be separately treated.

Illinois Ave. extension in Zone A.—This is a narrow strip (25,613 square feet) extending west from Packers Avenue. It lies entirely between the packing plants of Swift and of Morris. Its only use is as parking space. It is used by any one desiring to use it without restriction. No control of its use is exercised by plaintiff. It is impossible to know who uses it but it is a fair inference that much of such use

is by employes of the packing companies. The open end of the strip is at Packers Avenue which is a roadway running between the packing houses and the yard pens. It is some distance removed from the exchange building. The use or usefulness of this land to the business of the yards is not clear. The usefulness of parking space for trucks bringing in hogs appears in the evidence and the location of this area (not far from the hog pens) might change the situation if this space were controlled by plaintiff and devoted to such truck parking but that is not the showing here. It is even more conveniently located to the two packing houses and is subject to use by the employes thereof. It is a narrow space so little adapted to truck parking that plaintiff is now considering an exchange of land which will enable it to widen this area and thus afford better facilities for truck parking. If this should result and the space be devoted to and controlled for such truck parking, a different situation would come into existence which might warrant inclusion of this area. Such is not now true. The exclusion by the Secretary is not shown to be erroneous and is sustained.

[fol. 1970] Drainage Ditch in Zone B.—This ditch drains the south portion of the truck hog dock, a portion of the elevator area and the water tank area (both in southeastern extension of Zone A). The use and usefulness of this drain is not disputed. The challenge here is the extent to which the land for it in the southeastern edge of Tract B was allowed. Plaintiff claims 53,232 square feet while the allowance was of only 11,400 square feet, the dispute is over the difference of 41,832 square feet. The issue is the amount of land reasonably needed for this open ditch. The evidence is unsatisfactory as to this matter. A witness for plaintiff in a table ("Respondent's Exhibit 135") of "allocation of uses" of all of the land of the company includes an item of "Drainage Ditch" with a notation of 53,232 square feet in Zone B. There is evidence as to the location, course and uses of this ditch but not one word further as to the land actually occupied by the ditch and its necessary banks or layout. However, we take this evidence as having the effect that 53,232 square feet was thus occupied. In treating this matter, the Secretary (finding 66) arrives at his figure of 11,400 square feet as follows: the tract is long and narrow and follows the Belt Railway tracks which it adjoins; it is approximately 950

feet long; "Government Exhibit 107 indicates that a strip of land 12 feet wide is ample to accommodate the ditch in question"; the area 950 feet long by 12 feet wide gives his result of 11,400 square feet. Exhibit 107 is a map of the entire property of plaintiff. We find no notation or other indication whatsoever thereon bearing upon any width of this ditch. We are trying to deal with actual conditions. The selection of 12 feet for width has no relation to reality and no hint of basis in the evidence. It is a purely arbitrary selection which makes the result based thereon just as arbitrary. This finding is unsupported by any evidence and cannot be sustained. The addition allowance is accorded for 41,832 square feet or a total allowance for drainage ditch [fol. 1971] in Zone B of 53,232 square feet.

Water tank in Zone B.—This is a trivial dispute over 529 square feet. Two large water tanks, found by the Secretary to be used in the business were located in Zone A. One of them is at the line of Zone B. The contention that some of the supports of this tank extend over the line into Zone B and occupy 529 square feet therein seems sustained. The Secretary intended to allow fully for the tanks and this seems merely a trivial oversight.

Feed Lots in Zone C.—Plaintiff contends that the allowance of the Secretary (78,190 square feet) for these feed lots was short 166,402 square feet as it should have been for 244,592 square feet. Christensen (for defendant) and Block (for plaintiff) testified as to this area. The Secretary accepted the figures of Christensen which analyzed this Zone with great detail and particularity (Gov. Ex. 107-A, Tract 12). This conflict was a matter for the Secretary which we do not disturb unless more is shown. Plaintiff contends more is shown in that the evidence of Christensen showed 150,728 square feet of feed lots while the Secretary found only 78,190. Counsel have misapprehended the action of the Secretary in this respect. This action is evidently based upon the evidence of Christensen as shown in Government Exhibit 107-A (Tract 12). Item "(42)" of this exhibit deals with the land in Zone C "occupied by buildings and equipment leased to Henry Rockhold." This is divided into eleven items with total square footage of 150,728. Instead of passing on this matter as a whole, the Secretary made separate findings as to four items (e, j, k and l) and then

made a lump finding and allowance (78,190 square feet) as to seven items. The net result of his action was to disallow the two items k and l (horse and wagon yards 36,693 square feet and old dock 6,800 square feet) and to allow the balance of the 150,728 square feet as three items (Rockhold feed lot 78,190, parking between Belt Railway and sheep barns 28,901 and meter house 144 square feet). Since this entire [fol. 1972] matter resolves into a decision upon conflicting evidence, it results that plaintiff has failed to show arbitrary action or clear error and the finding of the Secretary is sustained.

Drainage Ditch in Zone F.—This involves disallowance of any land value covering area of a drainage ditch in Zone F. This ditch is the extension of the ditch in Zone B, above considered. Starting in Zone A, this ditch runs southerly along the eastern and southeastern edge of Zone B until it crosses under the Belt Railway tracks where it enters Zone F and changes to a westerly course along the northern edge of that zone. It continues this course to about the northwestern corner of Zone F and shortly thereafter empties into Brown's Branch. Besides draining the area in Zone A, mentioned above, it later receives the drainage from Zone E (the entire area (444,927 square feet) of which was allowed by the Secretary as used and useful). Zone E adjoins Zone F along half of the northeastern side of F. The reason stated by the Secretary for disallowing this item is that "it appears" the ditch was "primarily used for draining the remainder of the land in the Zone (F) and only secondarily for carrying water accumulated from respondent's Zone B" (finding 78). The evidence is undisputed that this ditch drains a part of Zone A and Zones B, E and F. There is no evidence that it "primarily" drains Zone F. The evidence is undisputed that drainage of Zone A and E (both found useful) was necessary and that this ditch was the best and most economical method of doing so. The mere fact that it drains other land does not affect its usefulness to the above two zones and is no reason for excluding it—it would have to be used in its entirety to drain Zones A and E. The upper reaches of this ditch (in Zone B) were allowed by the Secretary. No reason appears in the evidence to differentiate that portion of the ditch in Zone F. The only evidence of the land necessary and used for this ditch in Zone F is 79,680 square feet. This

determination of the Secretary is not supported by any [fol. 1973] evidence and (in that sense) is arbitrary. The allowance is for 79,680 square feet.

Dump and Roadway in Zone L.—Zone L is bounded on one side by the Missouri River. There is a city public dump on the river bank in this Zone. The roadway is across Zone L from a city street to the dump. This roadway is leased to the city for public use in connection with the dump and is so used. The entire area of roadway and dump is 42,400 square feet of which the dump contains 21,900 square feet. While the contention here is broadly for inclusion of both roadway and dump, the footage claimed is 21,900 so it would seem the actual controversy is over the dump. This zone is quite removed from the yards, being some distance back of the packing houses (which face on the yards). The Secretary allowed a dump in Zone N. The reason urged for the allowance of this second dump is that it is needed for various kinds of refuse (such as large blocks of concrete, scrap iron and tin, coated asphalt, roofing, etc., constituting worn out materials from the yards construction) which cannot be dumped in the sewer. Necessity for a place to dump such character of material is evident. However it is evident that occasion for such is infrequent. The use of this tract as a public city dump and the slight use by plaintiff does not constitute a clear showing that the Secretary was wrong in excluding this item and his action is sustained.

Roadway in Zone N.—This item is the west half of Exchange Street from Lake Street south. Exchange Street is a public paved street. This portion is bounded by platted lots on the east and by Belt Railway property on the west. The contention is that this half of the street has never been dedicated to public use. It has been so used for at least 11½ years. The street is used by trucks bringing or taking stock. Obviously, this situation is far from a clear showing of error by the Secretary in disallowing this item and his action is sustained.

Summary of "Minor Errors."—The determinations of [fol. 1974] the Secretary are sustained as to these items except as to the following allowances: drainage ditch in Zone B, an additional allowance of 41,832 square feet making a total of 53,232 square feet; water tank in Zone B,

allowance of 529 square feet; drainage ditch in Zone F, allowance of 79,680 square feet.

Summary as to Amount of Land

The results of the above discussion as to the amount of land to be included in the rate base value are to sustain the Secretary except as to the three items noted in the just preceding paragraph which items are allowed.

(2) Value of Land

This contention is that the valuation of (16¢ per square foot) of Zone A by the Secretary should have been at least 24¢ per square foot. There is no attack upon the land valuations in other zones. The evidence as to land values was from five witnesses—two (Mack and Zelinski) called by the Government and three (Spratt, Atkinson and Quinn) called by the petitioner. The higher value contended for by petitioner is apparently based upon its present use as stockyards property and not merely upon the availability of the land for such use, which latter is the proper standard (Clark's Ferry Bridge Co. vs. P. S. Commission, 291 U. S. 227; Minnesota Rate Cases, 230 U. S. 352). While petitioner's brief (pp. 117-139) attacks the reasoning of the Secretary as shown in his report and also attacks the evidence of Zelinski in several respects, we have not been able to conclude that the Secretary was so clearly wrong that we should overthrow his conclusions. His report on this issue (Exh. A to petition, pp. 67-75) discloses an earnest attempt to consider and analyze all of the testimony of these five witnesses who testified as to land value. This evidence was conflicting and consisted mainly of expert opinions and statement of and analysis of sales in the vicinity made during various years up to 1929. From this evidence, the Secretary might, in exercising his judgment thereon as to value, have found a different figure—there was no possible [fol. 1975] exact demonstration of value—but we are not prepared to say that any figure we might reach (if we were the original trier of value) would be any truer than the one found by the Secretary. While petitioner contends that we should determine this issue de novo, we do not understand that to be our duty. In fact, we think we have no right or power so to act. The Congress has committed this issue of fact to the Secretary and our only duty is to keep his action

within reasonable bounds—that is, to prevent it being arbitrary. This means that petitioner has the burden of showing that such action is clearly and convincingly wrong. Petitioner has failed to convince us to that effect. We think the value of 16¢ per square foot for Zone A should be su-tained.

(3) Exclusion of Structures

The Secretary excluded the Terminal Hotel, a harness shop, a garage and a building used for publication of a stockyards journal as not used and useful property. Petitioner claims these exclusions denied them a value of $231,151.00 wrongfully. Apparently there was no exclusion of garages (Exh. A to pet. p. 38). The exclusion of the Hotel was proper and has been adverted to above under 1a. The harness shop was properly excluded for the reasons given by the Secretary (Exh. A p. 53, par. 83). We are not able to locate the evidence or the finding of the Secretary as to the building used for publication of the stockyards journal except in finding 126 which gives the detailed items of eliminated structures. We conclude all of these exclusions were proper.

(4) Value of Structures

The main contention, as to the value allowed by the Secretary to the various structures included in the rate base, is that too much depreciation was used. The Secretary used 76.04% as the condition of the structures while petitioner contends for 89% condition. We think the reasoning of the Secretary (Exh. A pp. 96-103, par. 137-148) is sustained. Certainly this was a matter of judgment and [fol. 1976] it is not clearly shown that the results reached by the Secretary are erroneous.

(5) Exclusion of "Pre-organization Expenses" and "Cost Financing"

It is claimed additions to the overhead for these (two items should have been allowed. The reasons of the Secretary (Exh. A. pp. 92-94, par. 133-135) are satisfactory. These expenses are purely accounting possibilities. No actual expenditures for these purposes were shown here (Dayton P. & L. Co. vs. Comm., 292 U. S. 290, 309-310). If shown we think they should not be allowed. The pre-

liminary expenses allowed by the Secretary (findings 128-132) were certainly all the allowances of that character which should have been made.

(6) Exclusion of Going Concern Value

The contention is there should have been a separate and distinct allowance for "going concern" value. The Secretary recognized that there was "an element of value in an assembled and established plant doing business and earning money over one not thus advanced" (finding 159) but said:

"Yet, the very impossibility of finding any reasonable rule or measure wherewith to determine, for rate making purposes, the amount of such value, bespeaks the impropriety of attempting to include in rate making valuations any separate allowances for that purpose. The elaboration which Howson gives to his method does not disguise the fact that in the end it is but a guess. An arbitrary percentage of other values leads to the illogical conclusions that the more a property costs the greater is its going-concern value, even though it may not be earning any net return upon its cost of reproduction new. In actuality, going-concern value is conceived to be the difference between the present fair value of the physical properties of a business, plus its working capital, and its actual net earnings capitalized at the going rate of money. The use of such a measure in rate proceedings would have the effect of destroying the result of the elaborate procedure which is undertaken to avoid using capitalized income as a basis [fol. 1977] for determination of the reasonableness of that income. This is why a separate allowance for the element of going concern has no place in valuation for rate making purposes. Attempts to substitute other methods have led to the confusing and illogical results which so generally characterize separate allowance to cover going-concern value.

160. Exclusion from the rate base of such separate allowance is not, however, tantamount to the failure to include therein anything for the going concern element. The very fact that the land used in the business has the value ascribed to it is because of its capacity for use as part of a going concern. The cost of reproduction new of structures is

not necessarily value, but only such when and as it relates to property used as a part of a going concern. The record in this case shows that it would cost more to reproduce respondent's structures on a desert, without means of transportation or livestock to market, but that, when so reproduced, they would be valueless. This is because it is the going concern element that transmutes cost of reproduction new into value. When respondent's structures are included in the rate base at the cost of reproduction new less depreciation, rather than scrap or junk value, it is because, and only because, they have inherent in them their use in a going, operating business. Thus, in the rate base herein found, there is included a large amount for going-concern value; but such value is so inextricably interwoven with other values that any attempt to segregate it and set it up alone would lead to a conclusion as arbitrary and illogical as usually is found when such attempts are made."

In Dayton P. & L. Co. vs. Comm., 292 U. S. 290, 308, the Court said:

"Objection is made that the going value of the appellant's business should have been included in the base. The decisions of this court show what going value means (Los Angeles Gas & Electric Corp. vs. Railroad Commis- [fol. 1978] sion of California, supra, p. 313), distinguish it from good will, and hold that upon proof of its existence it may have a place in the base upon which rates are to be computed. The Commission was of opinion that there was here no constituent of property that called for separate appraisal apart from the recognition that had been given it as a contributory factor in other elements of value."

In the same case (p. 309) it was further said:

"The Commission took the view that whatever increment of value had emerged from these sources was sufficiently reflected in the allowance of the cost of developing 'new business' and in the appraisal of the physical assets as parts of an assembled whole. A like conclusion has been reached by this court in very similar conditions. Los Angeles Gas & Electric Corp. vs. Railroad Commission of California, supra, p. 314. Going value is not something to be read into every balance sheet as a perfunctory addition. 'It calls for consideration of the history and circum-

stances of the particular enterprise.' Los Angeles Gas & Electric Corp. vs. Railroad Commission of California, supra, p. 314. Here the company was a small one and its organization simple. There was no diversified and complex business with ramifying subdivisions. We cannot in fairness say that after valuing the assets upon the basis of a plant in successful operation, there was left an element of going value to be added to the total. Even if the addition might have been made without departure from accepted principles, the omission to make it does not appear to have been so unreasonable or arbitrary as to overleap discretion and reach the zone of confiscation. 'It is necessary again, in this relation, to distinguish between the legislative and judicial functions.' Los Angeles case, supra, p. 314. Much that the framers of a schedule are at liberty to do, this court in the exercise of its supervisory jurisdiction may not require them to do. For the legislative process, at least [fol. 1979] equally with the judicial, there is an indeterminate penumbra within which choice is uncontrolled."

The only evidence as to this element of value was by witness Howson (for petitioner). The testimony of this witness as to the theory and methods he employed is set forth in the testimony at the first hearing beginning with p. 283 and is further commented on in his testimony at the second hearing beginning on p. 1019. His definition of "going concern" value and the matters upon which he deemed it to depend begins on p. 286 of first hearing. His methods are quite complicated and involve numerous assumptions as bases and various computations also resting largely on assumptions or upon information which is not made part of this record except by pure hearsay. In the end, this entire evidence of Howson is nothing more than an expert opinion resting upon rather shadowy bases of facts. The Secretary was not compelled to accept such evidence as final (Dayton P. & L. Co. vs. Comm. 292 U. S. 290, 299). Moreover, at least some of the elements considered by Howson seem to have been included in the valuation by the Secretary (see finding 136 which includes such items as interest during construction ($125,106) and taxes during construction ($18,257)—possibly also, insurance during construction ($10,618, $46, and $485). Even if there were grave doubt as to whether the Secretary had sufficiently

included "going concern" value, he cannot be held clearly wrong in not accepting the above evidence as a basis for allowing such value and there was no other evidence upon which he could have acted. We think, under the situation here, the action of the Secretary in this respect must be sustained.

(7) Depreciation Reserve

The findings of the Secretary (Nos. 173-177) lump repairs and depreciation reserve into one sum ($80,000). The answer herein admits that of this sum $41,500 was for depreciation reserve. Petitioner claims at least $100,000 for such reserve. The evidence is quite intricate and de- [fol. 1980] tailed. The evidence is, also, of course, in hopeless conflict. That of Government witness Bachman shows great care to discover the elusive fact of what and where there was depreciation not taken care of by repairs and he pursued his investigation to great detail. Also, he thoroughly examined and analyzed the showing of the books of the company as to these items. We think the analysis of his and other testimony on this point in the Government's brief is very convincing. The findings of the Secretary show earnest study and consideration of the evidence and a very apparent attitude of fairness. We think the Secretary is fully sustained as to this matter. We are certain there is no clear showing he was not right.

Rate Base Summary

The only change we make in the rate base found by the Secretary is the addition thereto of the value of the land which we have above set forth as improperly excluded by the Secretary. This land consists of 42,361 square feet (41,832 and 529) in Zone B and 79,680 square feet in Zone F. The value per square foot found by the Secretary for Zone B was 16 cents. No value was determined by the Secretary for Zone F since he entirely excluded that zone. Petitioner states in its brief (pp. 103-104) that "the average value of the three appraisers for Zone F was 4¢ per sq. ft." and apparently adopts that figure. The 42,361 square feet in Zone B would (at 16¢) be a value of $6,777.76. We are very doubtful of our power to find that the value in Zone F is 4 cents or any other figure as that is primarily a duty of the Secretary. However, it may be that if the

inclusion of this additional land in Zone F at 4 cents (which seems the value urged by petitioner) will not render the order invalid, we might as well so state and avoid a remand to the Secretary. It is difficult to see how petitioner can complaint if we adopt its figure. If this is to be done, the additional 79,680 square feet in Zone F will have a value of $3,187.20.

[fol. 1981] The rate base fair value was found by the Secretary to be $2,743,000 (finding 161). Adding $6,777.76 for the above land in Zone B this value is $2,749,777.76 and further adding $3,187.20 for the above land in Zone F the value is $2,752,964.96 (for convenience in round figures this might be stated as $2,753,000).

(B) Rate of Return

The Secretary determined a reasonable rate of return to be 7% (finding 170) which would yield net earnings of $192,010 on his rate base value of $2,743,000. If the above rate base value of $2,753,000 is adopted, the net yield at 7% would be $192,710.00. He then fixed the rate of charge for various services (some being unchanged, some lower and some higher) at figures which he estimated would produce a net income of $195,564.00 (finding 208). Petitioner contends that, considering the circumstances, locality and risk of its business, it should have a rate of return of 15% or 16%. It stresses, also, that the Secretary has allowed 7½% to two of its competitors at Denver and Omaha, respectively, and upon the first hearing (in 1929) allowed it 7½%. As usual, there is much conflict in the testimony—mostly expert opinion—as to this issue. The Secretary seems to have given careful consideration to the matter and we find nothing in the evidence which convinces he was so far wrong, if at all, that his determination should be overthrown.

(C) Test Period

The Secretary used an estimated future volume of business to test the net return which would probably be received. This he used to ascertain if the particular rate schedule covered by the order would yield a net return equal to 7%. In this estimate he states the numbers of different kinds of stock going to make up this volume. This estimate seems based upon actual receipts for the years 1928-1932.

A Comparison of the figures in the estimate (finding 201) with those of actual receipts for the above years (finding [fol. 1982] 195) convinces that his estimate is conservative if the actual receipts are at all any fair basis from which to reason. Petitioner attacks this period of experience as no proper criterion of the future volume. It is true that conditions were abnormal in 1933 and yet are so, but there is no way of prophesying the future except by the past. There may well be a reduced volume of receipts below the normal for the period chosen. However, what, if any, reduction will occur is a matter purely of opinion and we can see no reason for thinking our opinion or that of petitioner would be more accurate than that of the Secretary. Certainly this is not convincingly shown.

(D) Operating Expenses

Petitioner states this contention (brief p. 342) as follows:

"The right of the Secretary to revise and disallow petitioner's miscellaneous expenses, in the manner shown in paragraph 181 of the decision, is challenged in section IX (I) of the petition. The subject matter is covered in paragraphs 181-193a, pages 120-125, inclusive, of exhibit A to the petition. We shall discuss these exceptions more or less as a group.

Apparently based upon the allocation of expenses contained in paragraph 181, the decision, (par. 193b) allows $302,500 as reasonable miscellaneous operating expenses. In order to arrive at such a low figure, it was necessary to deduct the following amounts from the expenses of petitioner for each of the following years:

1927	$311,709.15
1928	317,365.31
1929	312,812.35
1930	257,969.78
1931	266,853.22
1932	241,673.98
6 year average	284,730.63

To compensate for that deduction, the decision allows $123,767 for taxes, repairs and depreciation. This leaves an average annual reduction of petitioner's expenses of $160,963. The only proper items of petitioner's expense

[fol. 1983] which should be deducted in considering its operating expenses are bond interest and discount, which, for the six years, averaged $48,760.07. Deducting this from the $160,963, leaves $112,203, which is the average amount by which the decision reduces petitioner's expenses in order to reduce its rates."

The amount found by the Secretary for operating expenses (excluding taxes and provision for depreciation and repairs—as to which there were separate allowances) was $302,500.00 (finding 193a). This figure is an average of the book showing of expense expenditures for each of the years 1927-1932, less certain eliminations which the Secretary deemed proper. The book figures are not in question but the propriety of disallowing the eliminated items is the problem.

The Secretary gives his reasons for each character of elimination (findings 182-193). A detailed list of book shown expenditures is shown in a table attached to finding 181. Checking this table with the findings (182-193) it is ascertained that the substantial "eliminations" consist of depreciation, taxes and repairs which are not really eliminated from total expense—these three items are eliminated from the $302,500 but they appear as separately allowed items (finding 193b). Two eliminations (bond interest and bond discount) are conceded by the petitioner. This leaves eight items (Miscellaneous Adm. expense, donations and subscriptions, insurance, fiscal agents registrars, etc., miscellaneous O. R. E. expense, casualty insurance O. R. E., costs of shoes sold (employes) bond issue expenses, and interest). In some instances, the Secretary eliminated the entire item; in others, he eliminated a portion of the amount. Some of these items do not appear for all of the above years. Eliminating the year 1930 when there was a "bond issue expense" elimination of $8,277.15 (the only other "bond issue expense" being $1,000.00 in 1931), the total of all of these items for any one year is less than $6,000.00. The reason given by the Secretary for each of these eliminations is satisfactory and supported by the evidence.

[fol. 1984] (E) Feed Lot Yardage Charge

The revenues received by petitioner are derived from a variety of different services rendered by it. Among these

services are yardage, furnishing of feed and bedding, loading and unloading, furnishing feed lots, and various lesser miscellaneous services (such as dipping and spraying, immunizing hogs and cattle disease testing). Separate and distinct charges (somewhat based on the worth of the particular service) are made for each of these services. The result is a schedule of rates covering these various charges. The matter considered by and acted upon by the Secretary was this schedule. Of course, the aggregate receipts from all of these charges constitute the gross income of petitioner from which a reasonable net income must be and was estimated by the Secretary. Naturally, the gross and net income involved the receipts from each service as an element entering into such income. Any change in existing rates of the schedule involves changes in all or in some of the separate rates.

The Secretary determined two matters which guided his action in fixing changes in charges in the existing rate schedule (*finding* 206). First, he found that the existing rates resulted in production of an excessive revenue; second, he found that:

"under the existing schedule shippers of livestock who consign their animals to commission men are charged more by the respondent for the use of its facilities in handling such livestock for a shorter period of time than are those who use that portion of its facilities hereinbefore referred to as feed lots for a much longer period of time."

His endeavor was both to reduce the charges to the production of a reasonable revenue and also to remove the above discrimination regarding "feed lot" services. His action resulted in lowering the charge for some services and [fol. 1985] *of* raising the charge for feed lot service—regarding the latter, the report states (finding 208) that the new schedule:

"assesses also on those to whom feed lot service is furnished a charge sufficient to cover repairs and depreciation and pay a fair return on the value of that portion of the property used exclusively by them, and does not levy these expenses mainly on other users of the facilities, as does the schedule now in effect."

The schedule so formed by him is set out in finding 207. The changes in these feed lot charges are as follows:

"Sheep Feeding	5c per head	to 38c per head
Hog Feed	5c " "	" 38c " "
Cattle Feed:		
Where land only is furnished	15c " "	" 60c " "
Where sheds and other enclosures are furnished	35c " "	" 60c " " ."

While the feed lot charges are spoken of as being "raised", it is not meant that it would be a violation of the order if petitioner charged less but it is an official declaration of the maximum permissible charge. Petitioner contends that this change in feed lot charges results in confiscation:

"because the evidence shows that the amounts recommended by the Secretary cannot be collected; because, in case the Secretary finds unjust discrimination, he must afford petitioner an alternative method of removal; and because the record is without evidence to support the recommended increased charges."

Petitioner's brief argues the above reasons quite ably but it seems to us that this argument is completely met by that in the brief of the Secretary (pp. 160-175). The evidence supports the position so stated by the Secretary.

Summary

We have found no error in the action of the Secretary except as to his exclusion from the rate base of certain land [fol. 1986] in Zones B and F. However, the inclusion of the value of this land, which we think was improperly excluded, is not of sufficient influence to materially affect the result (as to confiscation vel non) here involved. The effect of the inclusion of such land value is as follows:

Secretary's rate base value $2,743,000 plus such added land value ($9,964.96) gives rate base value of $2,752,964.96 —for round figures say $2,753,000. Net return at rate of 7% on such rate base is $192,710.00 which is only $700.00 more than the amount ($192,010) found necessary under

the rate base of the Secretary. Under the estimate of the Secretary (finding 208) the gross revenue is $621,831 and the expenses $426,267 leaving a net revenue of $195,564.00 which is slightly more than the above net return ($192,710) necessitated by inclusion of this land value.

Since the above memorandum contains specific findings, in detail, as to all matters of disputed facts and since a formal finding of facts could be only a restatement of fact conclusions set forth herein, the determination of facts herein is to be taken as the findings of facts—the result being, that this court adopts the findings of facts made by the Secretary with the exception of his findings as to the exclusion of certain land in Zones B and F, as to which we find that there should be added to the land in Zone B an addition of 41,832 square feet and of 529 square feet at a valuation of 16 cents per square foot, and in Zone F an addition of 79,680 square feet which we have considered (for the purposes of this case) to be valued at 4½ cents per square foot.

We think the temporary injunction should be vacated and the petition should be dismissed for want of equity.

[File endorsement omitted.]

[fol. 1987] Clerk's certificate to foregoing transcript omitted in printing.

[fol. 1988] IN SUPREME COURT OF THE UNITED STATES

STATEMENT OF POINTS TO BE RELIED UPON AND DESIGNATION OF PARTS OF RECORD TO BE PRINTED—Filed Oct. 7, 1935

Now comes appellant in the above entitled cause, by William N. Strack and Ross Dean Rynder, its solicitors, and files this statement of the points upon which appellant intends to rely and of the parts of the record which it thinks necessary for the consideration thereof, together with proof of service of same upon appellees.

Statement of Points to be Relied upon by Appellant

1. The district court erred in holding that the case should not be reopened for further hearing before the Secretary,

in accordance with appellant's petition to the Secretary of February 2, 1934, and in the court's findings of fact and conclusions of law in connection therewith, as specified in assignments of error Nos. 1, 2 and 3.

2. The district court erred in holding that findings of fact by the Secretary of Agriculture, if supported by substantial evidence, are conclusive upon the reviewing court, in cases where the constitutional issue of confiscation is involved; and in failing to apply its independent judgment to the law [fol. 1989] and the facts of this case, as specified in assignments of error Nos. 4 and 5.

3. The district court erred in failing to find that the value of the Transit House should be included in the value of appellant's property used and useful for stockyards purposes, upon the grounds and for the reasons specified in assignments of error Nos. 6-14, inclusive.

4. The district court erred in failing to find that the real and true value of appellant's land in zone A exceeded the value fixed by the Secretary by approximately $275,000, and in failing to exercise its independent judgment upon the facts and the law in connection therewith, as specified in assignments of error Nos. 15 and 16.

5. The district court erred in failing to find that the cost of reproduction new of appellant's structures less depreciation, as determined by the Secretary, was not supported by any legal evidence; in failing to exercise its independent judgment upon the facts and the law in connection therewith; and in failing to find that the action of the Secretary was arbitrary, beyond the statutory power of the Secretary, confiscatory, and void, as specified in assignments of error Nos. 17, 18, and 19.

6. The district court erred in failing to find that appellant's property, used and useful for stockyards purposes, has a substantial going concern value, in addition to the bare value of the land and structures; and that the finding of the Secretary as to appellant's going concern value was contrary to the evidence, confiscatory, and void, as specified in assignments of error Nos. 20-24.

7. The district court erred in failing to find that the annual allowance for a depreciation reserve fixed by the Secretary was inadequate, contrary to the evidence, beyond the

statutory powers of the Secretaary, confiscatory, and void; [fol. 1990] and in failing to exercise its independent judgment upon the law and the facts; for the reasons specified in assignments of error Nos. 25-50, inclusive.

8. The district court erred in failing to find that the value determined by the Secretary as a rate base for appellant's property used and useful for stockyards purposes was less by approximately $1,000,000 than the real and true value of said property, and was contrary to the evidence, confiscatory, and void, as specified in assignments of error Nos. 51 and 52.

9. The district court erred in failing to find that appellant's rates and charges were not unreasonable at the time of the hearing; that the Secretary was without statutory authority to reduce rates and charges which were reasonable at the time of the hearing; and that the order of the Secretary was therefore contrary to the statute, confiscatory, and void; for the reasons and to the extent specified in assignments of error Nos. 53-73, inclusive.

10. The district court erred in holding that a reduction in appellant's rates and charges could be predicated upon higer earnings by appellant in remote years, or upon mere speculation and hypothesis as to higher earnings in future years, as specified in assignments of error Nos. 53, 57, 60, 65, and 69.

11. The District court erred in failing to find that the confiscatory or non-confiscatory character of the rates and charges prescribed by the Secretary must be determined upon the facts as to the value of the property, appellant's income, and reasonable and proper expenses, as to the time of the hearing before the Secretary, as specified in assignments of error Nos. 54, 55, 56, 61, 64, 68, and 71.

[fol. 1991] 12. The district court erred in failing to find that the rates and charges prescribed by the Secretary would not have produced a fair return upon the fair value of appellant's property at the time of the hearing or during the period of six years prior to the hearing considered by the Secretary, as specified in assignments of error Nos. 53, 54, 55, 56, 58, 61, 63, 64, 66, 67, 68, and 71.

13. The district court erred in failing to find that the elimination of appellant's reasonable and proper operating

expenses by the Secretary was contrary to the evidence, beyond the statutory power of the Secretary, and therefore confiscatory and void, as specified in assignments of error Nos. 74-77, inclusive.

14. The district court erred in failing to find, with respect to the feed lot yardage charges prescribed by the Secretary, that the findings of the Secretary with respect to the amounts of such charges and the finding that such charges were discriminatory, were unsupported by any evidence of record, speculative, and contrary to the evidence; and beyond the statutory power of the Secretary, in that the order of the Secretary did not afford appellant an alternative method of removing the discrimination stated by the Secretary, as specified in assignments of error Nos. 78-82, inclusive.

15. The district court erred in failing to find that at the time of the hearing appellant was applying a reweighing charge equivalent to that prescribed by the Secretary upon all shipments of live stock to which such charge could be applied under the Secretary's order; that therefore appellant could not obtain from such charges as were prescribed by the Secretary the increased revenue contemplated in the decision and order of the Secretary; and that the Secre- [fol. 1992] tary's findings in respect thereto were speculative, contrary to the evidence, and beyond the statutory power of the Secretary; upon the grounds and for the reasons specified in assignments of error Nos. 83-87, inclusive.

16. The district court erred in failing to find that in the year (1932) immediately preceding the hearing, which was the last year for which appellant's income and expenses were included in the record before the Secretary, the rates and charges prescribed by the Secretary would have produced net operating income of only 3.9 per cent upon the value of appellant's property, used and useful for stockyards purposes, as determined by the Secretary, as specified in assignments of error Nos. 88-93, inclusive.

17. The district court erred in failing to find that the decision and order of the Secretary do not contain the findings of fact necessary to support the prescribed reduction in appellant's net operating income, as specified in assignments of error Nos 53, 54, 55, 58, 60, 61, 64, 66, 68, 69, 72, and 73.

18. The district court erred in failing to find that the reductions prescribed by the Secretary in appellant's rates and charges are based solely upon conjecture and hypothesis as to appellant's future income and expenses, contrary to the facts of record at the time of the hearing, and are therefore arbitrary, confiscatory, and void, as specified in assignments of error Nos. 60, 69, 80, 83, and 85.

19. The district court erred in failing to find that the specific reductions and increases in appellant's rates and charges, prescribed by the Secretary, were unsupported by any evidence of record before the Secretary, and were therefore arbitrary, beyond the statutory power of the Secretary, confiscatory, and void, as specified in assignment of error No. 72.

[fol. 1993] 20. The district court erred in failing to find independently the facts, and to exercise its independent judgment upon the law and the facts, as they relate to (1) the application to reopen; (2) the Transit House; (3) land value; (4) value of structures; (5) going concern value; (6) annual allowance for a depreciation reserve; (7) rate base summary; (8) test period; (9) receipts of live stock and net operating income for the year 1932 and for the years 1927-1932, inclusive; (10) operating expenses; and (11) feed lot yardage charges, as specified in assignments of error Nos. 88-94, inclusive.

21. The district court erred in finding that the record made in the hearings before the Secretary of Agriculture and the findings of the Secretary were sufficient, in law and fact, to support the order made by the Secretary on May 4, 1934.

22. The district court erred in finding that the petition of appellant herein should be dismissed; in failing to issue the permanent injunction prayed for in said petition; and in entering its final decree herein of May 1, 1935.

Designation of Parts of Record to be Printed

Appellant hereby designates for printing the entire transcript of record herein (except such portions of the condensed narrative statement of record as are not included in the stipulation of counsel herein, dated September 11, 1935, and which have been deleted in red pencil in the three

[fol. 1994] volumes of the narrative statement of evidence attached to said stipulation) which appellant thinks necessary for consideration in determining the appeal herein, but not including the original exhibits which have been certified to this Court separately and not as part of said transcript of record.

William N. Strack, R. D. Rynder, Counsel for Appellant.

Acknowledgment of Service

Service of the foregoing statement of points to be relied upon by appellant upon the appeal herein and designation of parts of the record to be printed, and receipt of a copy thereof, are hereby admitted and acknowledged this 7th day of October, 1935.

Wendell Berge, Counsel for the United States of America and the Secretary of Agriculture.

[fol. 1995] [File endorsement omitted.]

Endorsed on cover: File No. 40,051. W. Missouri, D. C. U. S. Term No. 497. St. Joseph Stock Yards Company, appellant, vs. The United States of America and the Secretary of Agriculture. Filed October 7, 1935. Term No. 497, O. T., 1935.

FILE COPY

Supreme Court
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CHARLES ELMORE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1935

No. 497

ST. JOSEPH STOCK YARDS COMPANY,
Appellant,

vs.

THE UNITED STATES OF AMERICA AND THE SECRETARY OF AGRICULTURE.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF MISSOURI.

STATEMENT AS TO JURISDICTION.

R. E. CULVER,
WILLIAM N. STRACK,
ROSS DEAN RYNDER,
Counsel for Appellant.

INDEX.

Subject Index.

	Page
Statement as to jurisdiction	1
Statutes relied upon to sustain jurisdiction	1
Date of decree and application for appeal	5
Nature of the case	6
Decisions relied upon to sustain jurisdiction of Supreme Court on appeal	7

Table of Cases Cited.

Ann Arbor R. Co. v. United States, 281 U. S. 685, 74 L. Ed. 1098	8
Atchison, T. & S. F. R. Co. v. United States, 284 U. S. 248, 76 L. Ed. 273	7
Atchison, Topeka & Santa Fe Railway Co. v. United States, No. 606, October Term, 1934 (decided April 29, 1935)	7
Beaumont, S. L. & W. R. Co. v. United States, 282 U. S. 74, 75 L. Ed. 221	8
Chicago, R. I. & P. R. Co. v. United States, 284 U. S. 80, 76 L. Ed. 177	8
Florida v. United States, 282 U. S. 194, 75 L. Ed. 291	8
Great Northern R. Co. v. Sullivan, Law Ed. Adv. Ops. 1934-1935, Vol. 79, No. 9, p. 507	7
St. Louis & O'Fallon R. Co. v. United States, 279 U. S. 461, 73 L. Ed. 798	8
Tagg Bros. & Moorhead v. United States, 280 U. S. 420, 74 L. Ed. 524	8
Texas & P. R. Co. v. United States, 289 U. S. 627, 77 L. Ed. 1410	7
United States v. Baltimore & O. R. Co., Law Ed. Adv. Ops. 1934-1935, Vol. 79, No. 5, p. 301	7
United States v. Berwind-White Coal Min. Co., 274 U. S. 564, 71 L. Ed. 1204	8
United States v. Chicago, M., St. P. & P. R. Co., 282 U. S. 311, 75 L. Ed. 359	8
United States v. Louisiana, 290 U. S. 70, 78 L. Ed. 181	7

Statutes Cited.

Constitution of the United States, Fifth Amendment	6
Packers and Stockyards Act, 1921, 7 U. S. C. A. 211	1
7 U. S. C. A. 211a	2
7 U. S. C. A. 211b	2
7 U. S. C. A. 217	2
United States Code Annotated, Title 28, Section 43	3
Section 45	3
Section 46	4
Section 47a	4

IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE WESTERN DISTRICT OF MISSOURI
ST. JOSEPH DIVISION

In Equity.

No. 245.

ST. JOSEPH STOCK YARDS COMPANY,
Petitioner,

vs.

UNITED STATES OF AMERICA AND SECRETARY OF AGRICULTURE,
Defendants.

STATEMENT AS TO JURISDICTION OF UNITED STATES SUPREME COURT ON APPEAL.

In compliance with rule 12 of the revised rules of the Supreme Court of the United States, appellant submits herewith its statement showing the basis of the jurisdiction of this Court to entertain the appeal in the above entitled cause:

I.

Statutes Relied Upon to Sustain Jurisdiction.

The pertinent provisions of the *Packers and Stockyards Act, 1921* (U. S. C. A. tit. 7), are as follows:

"§ 211. Order of Secretary as to charges or practices; prescribing rates and practices generally. Whenever after full hearing upon a complaint made

as provided in section 210 of this chapter, or after full hearing under an order for investigation and hearing made by the Secretary on his own initiative, either in extension of any pending complaint or without any complaint whatever, the Secretary is of the opinion that any rate, charge, regulation, or practice of a stockyard owner or market agency, for or in connection with the furnishing of stockyard services, is or will be unjust, unreasonable, or discriminatory, the Secretary—

(a) May determine and prescribe what will be the just and reasonable rate or charge, or rate or charges, to be thereafter observed in such case, or the maximum or minimum, or maximum and minimum, to be charged, and what regulation or practice is or will be just, reasonable, and nondiscriminatory to be thereafter followed; and

(b) May make an order that such owner or operator (1) shall cease and desist from such violation to the extent to which the Secretary finds that it does or will exist; (2) shall not thereafter publish, demand, or collect any rate or charge for the furnishing of stockyard services other than the rate or charge so prescribed, or in excess of the maximum or less than the minimum so prescribed, as the case may be; and (3) shall conform to and observe the regulation or practice so prescribed. (Aug. 15, 1921, c. 64, § 310, 42 Stat. 166.)"

"§ 217. Proceedings for suspension of orders. For the purposes of sections 201 to 217 inclusive of this chapter, the provisions of all laws relating to the suspending or restraining the enforcement, operation, or execution of, or the setting aside in whole or in part the orders of the Interstate Commerce Commission, are made applicable to the jurisdiction, powers, and duties of the Secretary in enforcing the provisions of sections 201 to 217 inclusive of this chapter, and to any person subject to the provisions of sections 201 to 217 inclusive of this chapter. (Aug. 15, 1921, c. 64, § 316, 42 Stat. 168.)"

The provisions of law with respect to petitions seeking to suspend or enjoin orders of the Interstate Commerce Commission, made applicable to orders of the Secretary of Agriculture under section 217 above quoted, are contained in the sections (U. S. C. A. tit. 28) quoted below:

"§ 43. Venue of suits relating to orders of Interstate Commerce Commission. The venue of any suit brought to enforce, suspend, or set aside, in whole or in part, any order of the Interstate Commerce Commission shall be in the judicial district wherein is the residence of the party or any of the parties upon whose petition the order was made, except that where the order does not relate to transportation or is not made upon the petition of any party, the venue shall be in the district where the matter complained of in the petition before the commission arises, and except that where the order does not relate either to transportation or to a matter so complained of before the commission the matter covered by the order shall be deemed to arise in the district where one of the petitioners in court has either its principal office or its principal operating office. In case such transportation relates to a through shipment the term 'destination' shall be construed as meaning final destination of such shipment. (Oct. 22, 1913, c. 32, 38 Stat. 219.)"

"§ 45. (Judicial Code, section 209.) District courts; practice and procedure in certain cases. The jurisdiction of the district courts of cases brought under subdivisions 27 and 28 of section 41 of this title, and sections 20 and 43 of Title 49, shall be invoked by filing in the office of the clerk of the court a written petition setting forth briefly and succinctly the facts constituting the petitioner's cause of action, and specifying the relief sought. A copy of such petition shall be forthwith served by the marshal or a deputy marshal of the district court or by the proper United States marshal or deputy marshal upon every defendant therein named, and when the United States is a party defendant, the service shall be made by filing a copy of said

petition in the office of the secretary of the Interstate Commerce Commission and in the Department of Justice. Within thirty days after the petition is served, unless that time is extended by order of the court or a judge thereof, an answer to the petition shall be filed in the clerk's office, and a copy thereof mailed to the petitioner's attorney, which answer shall briefly and categorically respond to the allegations of the petition. No replication need be filed to the answer, and objections to the sufficiency of the petition or answer as not setting forth a cause of action or defense must be taken at the final hearing or by motion to dismiss the petition based on said grounds, which motion may be made at any time before answer is filed. In case no answer shall be filed as provided herein the petitioner may apply to the court on notice for such relief as may be proper upon the facts alleged in the petition. The court may, by rule, prescribe the method of taking evidence in cases pending in said court. In all other respects the practice and procedure shall conform as nearly as may be to that in like cases in a district court of the United States. (June 18, 1910, c. 309, § 1, 36 Stat. 539; March 3, 1911, c. 231, § 209, 36 Stat. 1149; Oct. 22, 1913, c. 32, 38 Stat. 219.)"

"§ 46. (Judicial Code, section 208.) Suits to enjoin orders of Interstate Commerce Commission to be against United States. Suits to enjoin, set aside, annul, or suspend any order of the Interstate Commerce Commission shall be brought in the district court against the United States. The pendency of such suit shall not of itself stay or suspend the operation of the order of the Interstate Commerce Commission; but the court, in its discretion, may restrain or suspend, in whole or in part, the operation of the commission's order pending the final hearing and determination of the suit. (June 18, 1910, c. 309, § 3, 36 Stat. 542; Mar. 3, 1911, c. 231, § 208, 36 Stat. 1149.)"

"§ 47a. (Judicial Code, section 210.) Appeal to Supreme Court from final decree; time for taking; priority. A final judgment or decree of the district

court in the cases specified in section 44 of this title may be reviewed by the Supreme Court of the United States if appeal to the Supreme Court be taken by an aggrieved party within sixty days after the entry of such final judgment or decree, and such appeals may be taken in like manner as appeals are taken under existing law in equity cases. And in such cases the notice required shall be served upon the defendants in the case and upon the attorney general of the State. The district court may direct the original record instead of a transcript thereof to be transmitted on appeal. The Supreme Court may affirm, reverse, or modify as the case may require the final judgment or decree of the district court in the cases specified in section 44 of this title. Appeal to the Supreme Court, however, shall in no case supersede or stay the judgment or decree of the district court appealed from, unless the Supreme Court or a justice thereof shall so direct, and appellant shall give bond in such form and of such amount as the Supreme Court, or the justice of that court allowing the stay, may require. Appeals to the Supreme Court under this section and section 47 of this title shall have priority in hearing and determination over all other causes except criminal causes in that court. (Mar. 3, 1911, c. 231, §210, 36 Stat. 1150; Oct. 22, 1913, c. 32, 38 Stat. 220.)"

II.

Dates of Decree and Application for Appeal.

The final decree of the three-judge district court of the United States, for the Western District of Missouri, St. Joseph Division, was entered May 1, 1935. An order of said court, staying said decree until June 8, 1935, was entered May 9, 1935. The application for appeal was filed May 24, 1935, and allowed May 24, 1935.

III.

Nature of the Case.

This was a suit brought by petitioner, St. Joseph Stock Yards Company, against the United States of America and Secretary of Agriculture for the purpose of suspending, enjoining, setting aside, and annulling a certain "findings, conclusion and order" issued by H. A. Wallace, Secretary of Agriculture, May 4, 1934, in a proceeding before said Secretary, entitled "In re *Secretary of Agriculture* v. *St. Joseph Stock Yards Company,* docket No. 298". In said "findings, conclusion and order", the Secretary purported to determine the value of petitioner's property used in the operation of its public stock yards at St. Joseph, and what would constitute a fair return thereon. Said order required petitioner, St. Joseph Stock Yards Company, to make substantial reductions in its rates and charges for stockyards services. On May 15, 1934, petitioner filed its petition in equity in the District Court of the United States, for the Western District of Missouri, St. Joseph Division. Petitioner prayed for a temporary restraining order or interlocutory injunction against said order of the Secretary, as well as for a permanent injunction after final hearing. With respect to specific findings of the Secretary, as specified in said petition, it was in general alleged that said findings were unsupported by the evidence of record; contrary to the evidence of record; contrary to the weight of the evidence; arbitrary; confiscatory; without due process of law; and that said decision would deprive petitioner of its property in violation of the fifth amendment to the Constitution of the United States.

On June 9, 1934, said petition came on for hearing before a federal district court, composed of three judges, Honorable Kimbrough Stone, Circuit Judge, Honorable Albert L. Reeves, District Judge, and Honorable Merrill E. Otis, Dis-

trict Judge. Said court granted a temporary injunction restraining the enforcement of said decision of the Secretary, pending final decision of the court.

On May 1, 1935, said court entered its final decree in this proceeding, in which it ordered, adjudged and decreed that the temporary injunction hereinbefore issued be dissolved; that petitioner's bill be dismissed; that the court retain jurisdiction of this case for the purpose of determining any proceeding or proceedings to enforce the bond given by petitioner as security for the temporary injunction hereinbefore issued; and that the costs of this proceeding be assessed against petitioner. The effective date of the decree was extended to June 8, 1935, to enable petitioner to perfect this appeal.

IV.

Decisions Relied Upon to Sustain Jurisdiction of Supreme Court on Appeal.

The decisions in which the Supreme Court has exercised its appellate jurisdiction in cases coming within the statutory provisions above quoted are very numerous. Amongst those which may be cited are the following:

No. 606, *The Atchison, Topeka & Santa Fe Railway Co.* v. *United States,* decided April 29, 1935 (not yet reported).

Great Northern R. Co. v. *Sullivan,* Law Ed. Adv. Ops. 1934-1935, Vol. 79, No. 9, p. 507.

United States v. *Baltimore & O. R. Co.,* Law Ed. Adv. Ops. 1934-1935, Vol. 79, No. 5, p. 301.

United States v. *Louisiana,* 290 U. S. 70, 78 L. Ed. 181.

Texas & P. R. Co. v. *United States,* 289 U. S. 627, 77 L. Ed. 1410.

Atchison, T. & S. F. R. Co. v. *United States,* 284 U. S. 248, 76 L. Ed. 273.

Chicago, R. I. & P. R. Co. v. *United States,* 284 U. S. 80, 76 L. Ed. 177.

United States v. *Chicago, M., St. P. & P. R. Co.,* 282 U. S. 311, 75 L. Ed. 359.

Florida v. *United States,* 282 U. S. 194, 75 L. Ed. 291.

Beaumont, S. L. & W. R. Co. v. *United States,* 282 U. S. 74, 75 L. Ed. 221.

Ann Arbor R. Co. v. *United States,* 281 U. S. 658, 74 L. Ed. 1098.

Tagg Bros. & Moorhead v. *United States,* 280 U. S. 420, 74 L. Ed. 524.

St. Louis & O'Fallon R. Co. v. *United States,* 279 U. S. 461, 73 L. Ed. 798.

United States v. *Berwind-White Coal Min. Co.,* 274 U. S. 564, 71 L. Ed. 1204.

Respectfully submitted,

R. E. Culver,
William N. Strack,
Ross Dean Rynder,
Solicitors for Appellant.

(6960-C)

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JAN 28 1936

IN THE

Supreme Court of the United States

OCTOBER TERM, 1935.

No. 497

ST. JOSEPH STOCK YARDS COMPANY,
Appellant,

vs.

UNITED STATES OF AMERICA AND SECRETARY OF AGRICULTURE,
Appellees.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF MISSOURI, ST. JOSEPH DIVISION.

BRIEF FOR APPELLANT.

WILLIAM N. STRACK,
ROSS DEAN RYNDER,
Attorneys for appellant.

January, 1936.

THE GUNTHORP-WARREN PRINTING COMPANY, 310 WEST JACKSON, CHICAGO

INDEX.

	PAGE
Opinions	1
Appendix to the Brief	2
The Statutes Involved (and pp. 1-9, inc., of Appendix to the Brief)	3
Specification of Assigned Errors Intended to be Urged	3
Statement of the Case	4
Summary of the Argument	7

The Argument.

I. The District Court erred in Declining to Exercise Its Independent Judgment upon the Law and the Facts as Disclosed by the Record before the Secretary and the Court in a Case Involving Confiscation.	10
The Question of Confiscation Is Squarely in Issue	11
Importance of the Question	15
Conflict of Decisions in District Courts	15
Similar Litigation Is Arising	17
An Unbroken Line of Decisions of this Court Indicates the Error of the District Court	18
II. Summary of Certain Additional Grounds for Reversal of Decree	23
A Prerequisite to the Reduction of Rates Is Evidence Which Will Support a Finding that Present Rates Are Unreasonable	24
An Order Made without Evidence, or upon Evidence Which Clearly Does Not Support It, is Void	25

The Prescribed Rates Must Be Reasonable, and the Condemned Rates Unreasonable, at the Time of the Hearing 26

The Decision Is Void if It Does Not Contain Basic or Essential Findings Which Support the Order 27

The Order Is Void if Based upon Mere Prophecy 28

III. The Order Is Void Because the Findings Necessary to Support It Are Not Stated in the Decision of the Secretary; Nor Are Such Findings Supplied in the Decision of the District Court..... 29

Basis for the Finding of Unreasonableness.... 29

The Decision Contains No Findings Respecting Appellant's Net Operating Income..... 31

The Decision Contains No Findings to Support Specific Reductions 33

The Decision Contains No Findings Which Support Certain Proposed Increases..... 35

The Decision Contains No Specific Findings Concerning Diminishing Receipts..... 36

The Decision of the District Court Does Not Contain Specific Findings of Fact upon Most Points 37

IV. The District Court Erred in Failing to Find that the Order Was Void Because Appellant's Rates and Charges Were Not Unreasonable at the Time of the Hearing 39

Essential Facts in Connection with this Point.. 39

Verification of Preceding Statements of Fact.. 39

Confiscatory Return if Prescribed Rates Had Been in Effect 45

Secretary Lacked Jurisdiction to Make Order.. 46

V. The District Court Erred in Failing to Find that the Rates Prescribed by the Secretary Would Not Have Produced a Fair or Non-confiscatory Return upon the Fair Value of Appellant's Property Used and Useful for Stockyards Purposes During the Period of Six Years Prior to the Hearing Considered by the Secretary in his Decision 46

Comparisons of Rate Reductions under First and Present Decisions 47

Propriety of Use of First Decision as Basis for Value 1927-1931 47

Value of Appellant's Property 1927-1931 50

Analysis of Operating Revenues and Expenses 1927-1931 51

Prescribed Rates Would Have Been Confiscatory During Entire Period Considered by Secretary 58

Facts Stated Dispose of Government's Contention as to Excessive Amount of Depreciation Reserve 59

VI. The Specific Reductions in the Rates and Charges Prescribed by the Secretary Are Arbitrary, Based Upon No Findings in the Decision, Not Supported by any Evidence of Record, and Are Therefore Void .. 60

The Inept Changes Prescribed in Appellant's Rates 64

Authorized Increase in Charges 67

VII. The Decision of the Secretary Was Erroneously Predicated Upon Speculation and Prophecy as to Increased Revenue Which Would Be Obtained by Appellant 69

Yardage Revenue Estimated by Secretary Compared with 1932 71

Resale Charge Estimated by Secretary Compared with 1932 71

Feed Lot Yardage Estimated by Secretary Compared with 1932 71

Revenue from Feed Sale Compared with 1932.. 72

Revenue from Miscellaneous Charges Compared with 1932 72

Summary of Errors in Estimates Compared with 1932 72

VIII. It Was Erroneous, and Contrary to the Indisputable Character of the Evidence, to Base Estimates of Increased Revenue for the Future upon a Study of Six Years, Contrary to the Evidence Which Demonstrates Gradually Diminishing Receipts Throughout the Period Studied 74

Trend of Live Stock Receipts Prior to Hearing. 76

Trend of Appellant's Income Prior to Hearing. 79

Reasons for Diminishing Receipts of Live Stock and Revenues 81

To Base Reduced Rates upon Predictions of Increased Revenue Was Contrary to Indisputable Character of the Evidence and Therefore Arbitrary and Void 83

IX. The District Court Erred in Failing to Find that At the Time of the Hearing Appellant Was Applying a Resale Charge Equivalent to that Prescribed by the Secretary upon All Shipments of Live Stock to Which Such Charge Could Be Applied under the Secretary's Order; That Therefore Appellant Could Not Obtain from Such Charges as Were Prescribed by The Secretary The Increased Revenue Contemplated in the Decision and Order of the Secretary.. 84

X. The District Court Erred in Failing to Find that the Order of the Secretary with Respect to Feed Lot Charges Was Void 93

The Secretary Has Not Prescribed the Feed Lot Charges as a Minimum 94

An Estimate of Increased Income Was Erroneously Predicated upon Increased Feed Lot Charges 94

No Findings to Support the Order of the Secretary 96

No Hearing in Any True Sense..... 97

The Evidence Does Not Support the Conclusion that the Returns from the Feed Lots Are Inadequate for the Results Which the Feed Lots Were Intended to Produce 99

The Finding Is Void Because No Alternative Is Offered as to Removal of Discrimination..... 102

XI. The District Court Erred in Failing to Find that the Value of the Transit House Should Be Included in the Value of Appellant's Property Used and Useful for Stockyards Purposes 104

No Change in Conditions Since First Decision.. 105

Exclusion of Transit House Is Confiscatory.... 107

Operation of Transit House a Matter Within Business Judgment of Appellant's Management 108

XII. The District Court Erred in Failing to Find that Appellant's Property, Used and Useful for Stockyards Purposes, Has a Substantial Going Concern Value, in Addition to the Bare Value of the Land and Structures 109

Facts Relating to Appellant's Going Concern Value 112

Value Fixed by Secretary Includes Nothing More Than Bare Bones of the Property..... 113

The District Court Erred in Stating that the Only Evidence Was by Witness Howson for Petitioner 117

The District Court Erred in Finding that Certain Elements of Going Concern Value Were Included in the Appraisal 120

The District Court Erred in Approving Certain Statements in the Decision of the Secretary.. 121

The Difficulty of Appraising Going Concern Value Does Not Excuse the Denial of a Proper Allowance 122

The Finding Is Arbitrary and, Therefore, Void. 125

This Case Distinguished from Dayton P. & L. Co. v. Public Utilities Commission and Columbus Gas & Fuel Co. v. Public Util. Com..... 127

Conclusion upon Going Concern Value..... 129

XIII. The District Court Erred in Failing to Find that the Cost of Reproduction New of Appellant's Structures, Less Depreciation, as Determined by the Secretary, Was Not Supported by Any Legal Evidence. 130

XIV. The District Court Erred in Failing to Find that the Annual Allowance for a Depreciation Reserve Fixed by the Secretary Was Inadequate, Contrary to the Evidence, Beyond the Statutory Powers of the Secretary, Confiscatory, and Void; and in Failing to Exercise Its Independent Judgment upon the Law and the Facts 134

Error in Opinion of District Court..... 135

Facts Relating to Depreciation Reserve..... 137

Principles Established by This Court Concerning Depreciation Reserve 141

The Amount Allowed by the Secretary Appears to Be Lower Than that Authorized in Any of the Decided Cases 141
The Secretary Has No Statutory Authority to Prescribe the Amount of a Depreciation Reserve 143
This Court Has Never Authorized or Required the Imposition of a Compound Interest Sinking Fund Basis for an Annual Depreciation Reserve 145
The Sinking Fund Method Should Go Only with an Undepreciated Rate Base and the Straight Line Method with a Depreciated Rate Base.. 147
The Structure Dealt with in the Clark's Ferry Bridge Company Case Is Dissimilar to Appellant's Plant 149
The Secretary Has Failed to Make Any Allowance for Tax Deductions in Connection with the Depreciation Allowance 151
The Secretary May Not Lawfully Require Appellant to Invest Money for the Purpose of Earning a Return to Provide an Adequate Depreciation Reserve 152
It Would Be Impracticable to Use the Depreciation Reserve in Additions and Improvements to the Property or in Appellant's Business.. 152
Investment in Interest Bearing Securities Would Be Impracticable 153
Appellant Has Definitely Proved the Necessity for an Annual Depreciation Allowance of Not Less than $100,000 153
The Record Shows the Property Has Not Existed a Sufficient Length of Time to Cause It to Reach a Period of Normal Deterioration.. 155
No Surplus in Depreciation Reserve for Past Years May Be Used as a Basis for Reducing Future Rates 156

Summary of Appellant's Contentions with Respect to Annual Allowance for Depreciation Reserve 157

XV. The District Court Erred in Failing to Find that the Real and True Value of Appellant's Land in Zone A Exceeded the Value Fixed by the Secretary by Approximately $275,000, and in Failing to Exercise Its Independent Judgment upon the Facts and Law.... 159

Failure of District Court to Exercise Independent Judgment upon the Law and the Facts... 159

Scope of Appeal..... 159

Importance of Land Values in Zone A..... 160

The Change in Value Determined by the Secretary Is So Great as to Require Careful Examination 160

No Basis for Finding in the First Decision that Going Concern Value Was Included in Land Appraisal 163

Fundamental Error of Secretary in Present Finding as to Value of Land in Zone A..... 163

The Conclusion of the Secretary Respecting the Belt Sale Is Arbitrary..... 168

The Finding of the Secretary Is Arbitrary Because It Ignores the Finding in the First Decision 171

The Secretary Has Disregarded the Law Announced by This Court Concerning the Elements to be Determined in Fixing Land Values 172

XVI. The District Court Erred in Its Decision Concerning Appellant's Petition for Rehearing before the Secretary..... 176

Facts Relating to Petition to Reopen..... 176

Error Assigned with Respect to Petition for Rehearing 178

The Petition for Further Hearing Should Have Been Allowed..... 180

Cases Cited.

American Commission Co. v. United States, 11 F. Supp. 965 15
Assigned Car Cases, 274 U. S. 564, 71 L. ed. 1204.... 16
Atchison, T. & S. F. R. Co. v. United States, 295 U. S 193, 79 L. ed. 1382.....11, 21, 24, 28
Atlanta, B. & C. R. Co. v. United States, ... U. S. ...., 80 L. ed. (Adv. Ops.) 25..... 22
Baltimore & O. R. Co. v. United States, 264 U. S. 258, 68 L. ed. 667..... 180
Beaumont, S. L. & W. R. Co. v. United States, 282 U. S. 74, 75 L. ed. 221.....23, 25, 27
Bluefield W. W. & Improv. Co. v. Public Service Com., 262 U. S. 679, 67 L. ed. 1176.....10, 19, 110
Board of Public Utility Com'rs. v. Elizabethtown Water Co., 43 F. (2d) 478..... 112
Board of Public Utility Comrs. v. New York Teleph. Co., 271 U. S. 23, 70 L. ed. 808..23, 26, 45, 57, 58, 152, 156
Brooklyn Borough Gas Co. v. Prendergast, 16 F. (2d) 615 .....109, 112
Brooklyn Union Gas Co. v. Prendergast, 7 F. (2d) 628. 111
Chesapeake & Potomac Telephone Co. v. West, 7 F. Supp. 214.....21, 142
Chicago, M. & St. P. R. Co. v. Polt, 232 U. S. 165, 58 L. ed. 554..... 97
Chicago, R. I. & P. R. Co. v. United States, 284 U. S. 80, 76 L. ed. 177.....10, 20
Citizens' Gas Co. v. Public Service Commission, 8 F. (2d) 632.....109, 111
City of Minneapolis v. Rand, 285 Fed. 818..... 111
Clark's Ferry Bridge Co. v. Public Service Commission, 165 Atl. 261..... 150

Clark's Ferry Bridge Co. v. Public Serv. Com., 291 U. S. 227, 78 L. ed. 767 ..... 141, 142, 147, 149, 157
Columbus Gas & Fuel Co. v. City of Columbus, 17 F. (2d) 630 112
Columbus Gas & Fuel Co. v. Public Utilities Commission, 187 N. E. 7 128
Columbus Gas & Fuel Co. v. Public Util. Com., 292 U. S. 398, 78 L. ed. 1327 ..... 10, 21, 110, 127, 128
Consolidated Gas Co. of New York v. Newton, 267 Fed. 231 108
Consolidated Gas Co. of New York v. Prendergast, 6 F. (2d) 243 111
Crowell v. Benson, 285 U. S. 22, 76 L. ed. 598 ..... 10, 20, 180

Dayton P. & L. Co. v. Public Utilities Commission, 292 U. S. 290, 78 L. ed. 1267 ..... 10, 20, 110, 127, 128
Denver v. Denver Union Water Co., 246 U. S. 178, 62 L. ed. 649 ..... 58, 110
Denver Union Stock Yard Co. v. United States, 57 F. (2d) 735 ..... 15, 92, 107, 109, 112, 123, 125
Des Moines Gas Co. v. City of Des Moines, 199 Fed. 204 111
Des Moines Gas Co. v. Des Moines, 238 U. S. 153, 59 L. ed. 1244 ..... 110, 116
Des Moines Water Co. v. City of Des Moines, 192 Fed. 193 111

Florida v. United States, 282 U. S. 194, 75 L. ed. 291 ..... 23, 27
Florida v. United States, 292 U. S. 1, 78 L. ed. 1077 16
Florida E. C. R. Co. v. United States, 234 U. S. 167, 58 L. ed. 1267 ..... 23, 25, 180
Fort Worth Gas Co. v. City of Fort Worth, 35 F. (2d) 743 142

Galveston Electric Co. v. Galveston, 258 U. S. 388, 66 L. ed. 678 110
Goldfield Consol. Water Co. v. Public Service Com'n., 236 Fed. 979 111

Great Northern R. Co. v. Minnesota, 238 U. S. 340, 59 L. ed. 1337 ..... 23, 25, 74
Greencastle Water Works Co. v. Public Service Commission, 31 F. (2d) 600 133

Idaho Power Co. v. Thompson, 19 F. (2d) 547 112
International Ry. Co. v. Prendergast, 1 F. Supp. 623 .. 112
Interstate Commerce Com. v. Louisville & N. R. Co., 227 U. S. 88, 57 L. ed. 431 ..... 16, 23, 25, 133, 179
Interstate Commerce Com. v. Northern P. R. Co., 216 U. S. 538, 54 L. ed. 608 ..... 23, 24

Kansas City Southern Ry. Co. v. United States, 19 F. (2d) 591 112
Kings County Lighting Co. v. Prendergast, 7 F. (2d) 192 111
Knoxville v. Knoxville Water Co., 212 U. S. 1, 53 L. ed. 371 ..... 10, 18, 109, 141

Lehigh Valley R. Co. v. Board of Public Utility Comrs., 278 U. S. 24, 73 L. ed. 161 ..... 10, 19
Lincoln Gas & E. L. Co. v. Lincoln, 250 U. S. 256, 63 L. ed. 968 110
Lindheimer v. Illinois Bell Teleph. Co., 292 U. S. 151, 78 L. ed. 1182 ..... 10, 20, 59, 143, 145
Los Angeles Gas & Electric Corporation v. Railroad Com'n., 58 F. (2d) 256 148
Los Angeles G. & E. Corp. v. Railroad Com., 289 U. S. 287, 77 L. ed. 1180 ..... 110, 113, 116, 127, 148

McCardle v. Indianapolis Water Co., 272 U. S. 400, 71 L. ed. 316 ..... 23, 26, 110
Merchants Warehouse Co. v. United States, 283 U. S. 501, 75 L. ed. 1227 16
Middlesex Water Co. v. Board of Public Utility Com'rs, 10 F. (2d) 519 111
Minnesota Rate Cases, 230 U. S. 352, 57 L. ed. 1511 . 172, 173
Missouri Ex Rel. S. W. Bell T. Co. v. Public Serv. Com., 262 U. S. 276, 67 L. ed. 981 ..... 23, 26, 108, 145

Missouri, K. & T. Ry. Co. v. Love, 177 Fed. 493..... 111
Mobile Gas Co. v. Patterson, 293 Fed. 208 .....108, 111
Monroe Gaslight & Fuel Co. v. Michigan Public Utilities Com'n, 11 F. (2d) 319 111

New England Divisions Case, 261 U. S. 184, 67 L. ed. 605 16
New York & Richmond Gas Co. v. Prendergast, 10 F. (2d) 167 .....111, 123
Northern P. R. Co. v. Department of Public Works, 268 U. S. 39, 69 L. ed. 836.....10, 19
Northwestern Bell Telephone Co. v. Spillman, 6 F. (2d) 663 109
Norwegian Nitrogen Prod. Co. v. United States, 288 U. S. 294, 77 L. ed. 796.....10, 20

Ohio Valley Water Co. v. Ben Avon Borough, 253 U. S. 287, 64 L. ed. 908.....10, 18
Oklahoma Operating Co. v. Love, 252 U. S. 331, 64 L. ed. 596 .....10, 18
Omaha v. Omaha Water Co., 218 U. S. 180, 54 L. ed. 991 110

Pacific G. & E. Co. v. City and County of San Francisco, 273 Fed. 937 111
Pacific Gas & Electric Co. v. Railroad Commission, 5 F. Supp. 878 .....112, 142
Pacific Telephone & Telegraph Co. v. Whitcomb, 12 F. (2d) 279 .....109, 111, 123
Phillips v. Commissioner of Internal Revenue, 283 U. S. 589, 75 L. ed. 1289.....10, 19
Pioneer Telephone & Telegraph Co. v. Westenhaver, 118 Pac. 354 142
Prendergast v. New York Teleph. Co., 262 U. S. 43, 67 L. ed. 853 .....10, 19

San Joaquin & Kings River C. & I. Co. v. Stanislaus County, 191 Fed. 875..... 142
Schechter v. United States, 295 U. S. 495, 79 L. ed. 1570 .....24, 26

Seaboard Air Line Railway Co. v. United States, 254 U. S. 57, 65 L. ed. 129 16
Skinner & Eddy Corp. v. United States, 249 U. S. 557, 63 L. ed. 772 ..... 16, 103
Southern Bell Tel. & Tel. Co. v. Railroad Com'n of S. C., 5 F. (2d) 77 111
Southern R. Co. v. Virginia, 290 U. S. 190, 78 L. ed. 260 ..... 24, 26, 180
Spring Val. Waterworks v. City, etc., of San Francisco, 124 Fed. 574 110
St. Joseph Stock Yards Co. v. United States, 58 F. (2d) 290 ..... 2, 4, 5, 15, 33, 48, 54, 56, 58, 112, 117, 125, 137, 140, 161, 172
St. Joseph Stock Yards Co. v. United States, 11 F. Supp. 322 ..... 1, 5, 12, 14, 56, 75, 95, 106, 112, 117, 120, 121, 122, 130, 135, 145, 159, 176, 177
St. Louis & O'Fallon R. Co. v. United States, 279 U. S. 461, 73 L. ed. 798 64
Stafford v. Wallace, 258 U. S. 495, 66 L. ed. 735 6
Streator Aqueduct Co. v. Smith, 295 Fed. 385 111

Tagg Bros. & Moorhead v. United States, 280 U. S. 420, 74 L. ed. 524 ..... 3, 6, 22, 23, 26, 103, 178
Telephone and Railroad Depreciation Charges, 118 I. C. C. 295 148
Telephone and Railroad Depreciation Charges, 177 I. C. C. 351 ..... 145, 148
Texas & P. R. Co. v. United States, 289 U. S. 627, 77 L. ed. 1410 103

Union Stock Yards Co. of Omaha v. United States, 9 F. Supp. 864 ..... 15, 63, 126
United Fuel Gas Co. v. Public Service Commission, 14 F. (2d) 209 111
United R. & Electric Co. v. West, 280 U. S. 234, 74 L. ed. 390 ..... 10, 19, 141

United States v. Abilene & S. R. Co., 265 U. S. 274, 68 L. ed. 1016 ..... 133, 180
United States v. Baltimore & O. R. Co., 293 U. S. 454, 79 L. ed. 587 ..... 24, 28
United States v. Butler, ... U. S. ...., 80 L. ed. (Adv. Ops.) 287 184
United States v. Chicago, M., St. P. & P. R. Co., 294 U. S. 499, 79 L. ed. 1023 ..... 11, 21, 24, 28, 97
United States v. Louisville & N. R. Co., 235 U. S. 314, 59 L. ed. 245 16

C. H. Venner Co. v. Urbana Waterworks, 174 Fed. 348 111

West v. Chesapeake & P. Teleph. Co., 295 U. S. 662, 79 L. ed. 1640 ..... 11, 21, 162, 171
West Ohio Gas. Co. v. Public Utilities Com., 294 U. S. 63, 79 L. ed. 761 97
West Ohio Gas Co. v. Public Utilities Com., 294 U. S. 79, 79 L. ed. 773 ..... 11, 21, 24, 28, 36, 58, 69
Western Paper Makers' Chemical Co. v. United States, 271 U. S. 268, 70 L. ed. 941 17
Westinghouse Electric & Mfg. Co. v. Denver Tramway Co., 3 F. (2d) 285 111
Wichita Gas Co. v. Public Service Commission, 2 F. Supp. 792 ..... 112, 124
Wichita Gas Co. v. Public Service Commission, 3 F. Supp. 722 ..... 112, 142

IN THE

Supreme Court of the United States

OCTOBER TERM, 1935.

No. 497

ST. JOSEPH STOCK YARDS COMPANY,
Appellant,

vs.

UNITED STATES OF AMERICA AND SECRETARY OF AGRICULTURE,
Appellees.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF MISSOURI, ST. JOSEPH DIVISION.

BRIEF FOR APPELLANT.

OPINIONS.

The decision of the District Court for the Western District of Missouri, St. Joseph Division, from which this appeal is taken (R. 910), is *St. Joseph Stock Yards Co.* v. *United States*, 11 F. Supp. 322.

This litigation was instituted by the Secretary of Agriculture by an order of October 9, 1929 (R. 182). The decision of the Secretary upon the first hearing, dated July 20, 1931, entitled "Docket No. 298, *Secretary of Agriculture* v. *St. Joseph Stock Yards Company, respondent,* Findings,

Conclusions and Order", is not published in printed form. For convenience, it is reproduced at pages 10-63 of the appendix to this brief. It is hereinafter referred to as the *first decision of the Secretary.* The opinion of the District Court for the Western District of Missouri, St. Joseph Division, granting a permanent injunction against said first decision of the Secretary, is reported in *St. Joseph Stock Yards Co. v. United States,* 58 F. (2d) 290. Thereafter the proceeding was reopened by the Secretary (R. 394). The decision of the Secretary upon the further hearing (the subject of this appeal), entered May 4, 1934 and bearing the caption "Docket No. 298, *Secretary of Agriculture* v. *St. Joseph Stock Yards Company, respondent,* Findings, Conclusions and Order", appears as appendix A to appellant's petition in the District Court (R. 24).

APPENDIX TO THE BRIEF.

We are presenting herewith a separate volume, entitled "Appendix to Appellant's Brief". This appendix is prepared in order that the brief itself may be kept within reasonable limits. Valuation cases of this character involve extensive records and many classes of subject matter. The exhibits necessary upon this appeal have been certified as original exhibits. In addition to the statutes cited, there are, for convenience, included in the appendix the first decision of the Secretary of Agriculture in this proceeding; and portions of other decisions of the Secretary. We have also, for convenience, included in the appendix certain excerpts from the original exhibits. The appendix contains nothing of an argumentative nature and is intended merely as a convenient source of verification for statements of fact which may appear in this brief. It need not be consulted except for that purpose.

THE STATUTES INVOLVED.

The provisions of law which authorize the Secretary to regulate the charges of public stockyards (U. S. C. A. tit. 7, §§210 and 211, appendix to brief, pp. 3-4) are almost word for word transferred from the provisions of the *interstate commerce act* which authorize the Interstate Commerce Commission to prescribe railroad rates. The provisions for court review of the orders of the Commission are in terms made applicable to court review of orders of the Secretary (U. S. C. A. tit. 7, §217, appendix to brief, p. 5). These provisions of the *interstate commerce act* have been construed by this court in a number of cases over a period of approximately forty-five years. In *Tagg Bros. & Moorhead* v. *United States,* 280 U. S. 420, 442, 74 L. ed. 524, 536, after citing certain rules applied by the court to the decisions of the Commission, it is stated:

> "These rules are applicable also to suits arising under the Packers and Stockyards Act."

SPECIFICATION OF ASSIGNED ERRORS INTENDED TO BE URGED.

Appellant intends to urge each of the assigned errors. While they are numerous, in order to afford statement with the particularity required by rule 9, they fall into certain well defined groups as to which the assignments are either as to error in the findings of the District Court or error in failing to make certain findings. The specific assignments of error will be mentioned in each point of the argument.

STATEMENT OF THE CASE.

The Secretary of Agriculture promulgated on May 4, 1934, in "Docket No. 298, *Secretary of Agriculture* v. *St. Joseph Stock Yards Company, respondent,* Findings, Conclusions and Order" (R. 24-131), certain findings concerning the charges made by appellant and entered an order which prescribed substantial reductions in the rates thereafter to be charged by appellant for the services performed in its public stockyards at South St. Joseph, Mo. This decision and order are hereinafter referred to as the decision of the Secretary. The principal reductions prescribed were in the yardage charges; that is to say, the charges made by appellant for its services in connection with the custody, receipt, and holding of live stock pending disposition by the owner.

This proceeding was initiated by the Secretary upon his own motion by an order of October 9, 1929 (R. 182). A hearing under said order was had before an Examiner of the Secretary, December 2 to December 17, 1929, inclusive (R. 182). On July 20, 1931, the Secretary issued therein a document entitled "Docket No. 298, *Secretary of Agriculture* v. *St. Joseph Stock Yards Company, respondent,* Findings, Conclusions and Order". This decision of the Secretary is printed at pages 10-63 of the appendix to this brief and is hereinafter referred to as the *first decision* as distinguished from the decision of the Secretary now in litigation.

On August 7, 1931, appellant filed its petition in the District Court of the United States for the Western District of Missouri, St. Joseph Division, seeking to have said order of July 20, 1931, set aside. Upon final hearing, a permanent injunction against said order was entered. *St. Joseph Stock Yards Co.* v. *United States,* 58 F. (2d) 290.

Following this decision the proceeding was reopened for further hearing by an order of the Secretary dated July 19, 1932 (R. 394). That order provided (R. 396) "that the record heretofore made in this docket, together with all the evidence introduced at said hearing, shall constitute the record before the Secretary of Agriculture in this proceeding"; that is to say, the record upon which the present decision was made included the record upon which was based the decision of the Secretary enjoined in *St. Joseph Stock Yards Co.* v. *United States,* 58 F. (2d) 290. For that reason, all of the evidence at said first hearing, relevant to the points raised by the assignments of error, has been included in the record certified to this court.

A further hearing was had before an Examiner of the Secretary of Agriculture January 10 to February 16, 1933, inclusive. On May 4, 1934, the Secretary entered the decision and order the lawfulness of which is here in issue (R. 24, 131). On May 15, 1934, appellant filed its petition in the District Court for the Western District of Missouri, St. Joseph Division, asking an interlocutory injunction against said order of the Secretary and a permanent injunction after final hearing. The interlocutory injunction was granted conditioned upon the filing of a bond by appellant to secure refund of charges in excess of those prescribed by the Secretary in case the order of the Secretary should be sustained. On May 1, 1935, the District Court filed its decision *St. Joseph Stock Yards Co.* v. *United States,* 11 F. Supp. 322, and therewith its decree, dismissing appellant's bill (R. 141). An order staying said decree was entered May 9, 1935, to permit appellant to apply for and perfect this appeal (R. 142). The appeal was allowed May 24, 1935 (R. 163). Supersedeas was granted (R. 164) upon the filing by appellant of a bond for $200,000 to secure refund of charges in excess of those prescribed by the Secretary, in case the decree

below should be affirmed. On October 28, 1935, this Court noted a finding of probable jurisdiction.

With respect to specific findings of the Secretary in the decision here in issue, the petition in the District Court (R. 1) alleged certain grounds upon which it was contended that the order was void. In general, the reasons so assigned in the petition were that certain fundamental findings of the Secretary were unsupported by the evidence of record; contrary to the evidence of record; contrary to the weight of the evidence; arbitrary; confiscatory; and that the order of the Secretary would deprive appellant of its property without due process of law in violation of the fifth amendment to the Constitution of the United States.

This is the first case to reach this court wherein, under the *Packers and Stockyards Act, 1921,* the Secretary has prescribed the charges to be imposed by a public stockyards company. The order has been attacked as confiscatory and as depriving appellant of certain statutory rights.

Stafford v. *Wallace,* 258 U. S. 495, 66 L. ed. 735, merely declared the *Packers and Stockyards Act, 1921,* to be constitutional, a point not involved in this appeal. It did not deal with the charges made by a stockyards. *Tagg Bros. & Moorhead* v. *United States,* 280 U. S. 420, 74 L. ed. 524, involved the charges prescribed by the Secretary for the services performed by certain commission men, but the powers and duties of a court in a case where confiscation is alleged were not there determined.

The case therefore presents several important questions which it would be well to have decided, not only for the benefit of the stockyards companies which now are or may hereafter be involved in litigation, but also for the benefit of the administrative tribunal.

SUMMARY OF THE ARGUMENT.

I.

The District Court Erred in Declining to Exercise Its Independent Judgment Upon the Law and the Facts as Disclosed by the Record Before the Secretary and the Court in a Case Involving Confiscation.

II.

Summary of Certain Additional Grounds for Reversal of Decree.

III.

The Order Is Void Because the Findings Necessary to Support It Are Not Stated in the Decision of the Secretary; Nor Are Such Findings Supplied in the Decision of the District Court.

IV.

The District Court Erred in Failing to Find That the Order Was Void Because Appellant's Rates and Charges Were Not Unreasonable at the Time of the Hearing.

V.

The District Court Erred in Failing to Find That the Rates Prescribed by the Secretary Would Not Have Produced a Fair or Non-Confiscatory Return Upon the Fair Value of Appellant's Property Used and Useful for Stockyards Purposes During the Period of Six Years Prior to the Hearing Considered by the Secretary in His Decision.

VI.

The Specific Reductions in the Rates and Charges Prescribed by the Secretary Are Arbitrary, Based Upon No Findings in the Decision, Not Supported by Any Evidence of Record, and Are Therefore Void.

VII.

The Decision of the Secretary Was Erroneously Predicated Upon Speculation and Prophecy as to Increased Revenue Which Would Be Obtained by Appellant.

VIII.

It Was Erroneous, and Contrary to the Indisputable Character of the Evidence, to Base Estimates of Increased Revenue for the Future Upon a Study of Six Years, Contrary to the Evidence, Which Demonstrates Gradually Diminishing Receipts Throughout the Period Studied.

IX.

The District Court Erred in Failing to Find That at the Time of the Hearing Appellant Was Applying a Resale Charge Equivalent to That Prescribed by the Secretary Upon All Shipments of Live Stock to Which Such Charge Could Be Applied Under the Secretary's Order; That Therefore Appellant Could Not Obtain from Such Charges as Were Prescribed by the Secretary the Increased Revenue Contemplated in the Decision and Order of the Secretary.

X.

The District Court Erred in Failing to Find That the Order of the Secretary With Respect to Feed Lot Charges Was Void.

XI.

The District Court Erred in Failing to Find That the Value of the Transit House Should Be Included in the Value of Appellant's Property Used and Useful for Stockyards Purposes.

XII.

The District Court Erred in Failing to Find That Appellant's Property, Used and Useful for Stockyards Purposes, Has a Substantial Going Concern Value, in Addition to the Bare Value of the Land and Structures.

XIII.

The District Court Erred in Failing to Find That the Cost of Reproduction New of Appellant's Structures, Less Depreciation, as Determined by the Secretary, Was Not Supported by Any Legal Evidence.

XIV.

The District Court Erred in Failing to Find That the Annual Allowance for a Depreciation Reserve Fixed by the Secretary Was Inadequate, Contrary to the Evidence, Beyond the Statutory Powers of the Secretary, Confiscatory, and Void; and in Failing to Exercise Its Independent Judgment Upon the Law and the Facts.

XV.

The District Court Erred in Failing to Find That the Real and True Value of Appellant's Land in Zone A Exceeded the Value Fixed by the Secretary by Approximately $275,000, and in Failing to Exercise Its Independent Judgment Upon the Facts and Law.

XVI.

The District Court Erred in Its Decision Concerning Appellant's Petition for Rehearing Before the Secretary.

I.

THE DISTRICT COURT ERRED IN DECLINING TO EXERCISE ITS INDEPENDENT JUDGMENT UPON THE LAW AND THE FACTS AS DISCLOSED BY THE RECORD BEFORE THE SECRETARY AND THE COURT IN A CASE INVOLVING CONFISCATION.

Knoxville v. *Knoxville Water Co.*, 212 U. S. 1, 53 L. ed. 371.

Oklahoma Operating Co. v. *Love*, 252 U. S. 331, 64 L. ed. 596.

Ohio Valley Water Co. v. *Ben Avon Borough*, 253 U. S. 287, 64 L. ed. 908.

Prendergast v. *New York Teleph. Co.*, 262 U. S. 43, 67 L. ed. 853.

Bluefield W. W. & Improv. Co. v. *Public Service Com.*, 262 U. S. 679, 67 L. ed. 1176.

Northern P. R. Co. v. *Department of Public Works*, 268 U. S. 39, 69 L. ed. 836.

Lehigh Valley R. Co. v. *Board of Public Utility Comrs.*, 278 U. S. 24, 73 L. ed. 161.

United R. & Electric Co. v. *West*, 280 U. S. 234, 74 L. ed. 390.

Phillips v. *Commissioner of Internal Revenue*, 283 U. S. 589, 75 L. ed. 1289.

Chicago, R. I. & P. R. Co. v. *United States*, 284 U. S. 80, 76 L. ed. 177.

Crowell v. *Benson*, 285 U. S. 22, 76 L. ed. 598.

Norwegian Nitrogen Prod. Co. v. *United States*, 288 U. S. 294, 77 L. ed. 796.

Lindheimer v. *Illinois Bell Teleph. Co.*, 292 U. S. 151, 78 L. ed. 1182.

Dayton P. & L. Co. v. *Public Utilities Commission*, 292 U. S. 290, 78 L. ed. 1267.

Columbus Gas & Fuel Co. v. *Public Util. Com.*, 292 U. S. 398, 78 L. ed. 1327.

West Ohio Gas Co. v. *Public Utilities Com.*, 294 U. S. 79, 79 L. ed. 773.

United States v. *Chicago, M., St. P. & P. R. Co.*, 294 U. S. 499, 79 L. ed. 1023.

Atchison, T. & S. F. R. Co. v. *United States*, 295 U. S. 193, 79 L. ed. 1382.

West v. *Chesapeake & P. Teleph. Co.*, 295 U. S. 662, 79 L. ed. 1640.

The error here alleged is covered by no. 2 of our statement of points to be relied upon and by assignments of error nos. 4 and 5.

The question of confiscation is squarely in issue. Appellant alleged in its petition that the order was confiscatory, and thereupon contended that it was entitled to the independent judgment of the District Court upon the law and the facts. Substantially each paragraph of the petition in the District Court (R. 1), except the formal portions, alleges that the decision and order, if permitted to become effective, will result in confiscation of appellant's property in the constitutional sense; that is to say, because the prescribed rates would not permit a fair return upon the fair value of the property. It is apparent from an examination of the petition in the District Court that appellant alleged, as it still contends, that the order was void, amongst other reasons, because—

1. The prescribed rates would have produced a confiscatory return at the time of the hearing and prior thereto, even upon the values determined by the Secretary.

2. The value of appellant's land, as determined by the Secretary in the present decision, is far below its real and true value.

3. The elimination of the Transit House from the property upon which appellant may earn a fair return is *pro tanto* confiscatory.

4. The depreciated value placed by the Secretary upon appellant's structures found by him to be used and useful is confiscatory.

5. The denial of going concern value as a part of the total value of appellant's property is confiscatory.

6. The amount allowed annually for a depreciation reserve, to be included in operating expenses, is inadequate and confiscatory.

With respect to each allegation of confiscation in the petition, there was complete evidence before the Secretary on behalf of the appellant, as is shown by the printed record in this court of the oral evidence, which includes all the evidence upon each point as to which error is assigned.

In the District Court, appellant urged that it was entitled to the *independent judgment of the District Court upon the law and the facts.* By that contention it was meant that, in a case of this kind where confiscation is seriously urged, and there is conflicting evidence, the District Court has the power, and the corresponding duty, to weigh the evidence presented to it (which in this case was all of the evidence of both parties taken at the hearings before the Secretary) and to decide the cause according to the weight of the evidence and as justice may require.

The validity of this contention was denied by the District Court. The point is discussed at pages 326-328 (11 F. Supp.). The District Court decided, in substance, that its powers and duties extend only to requiring it to examine the record so far as may be necessary *to determine whether there was some substantial evidence to support the conclusions and order of the Secretary.* We quote here a few paragraphs from the decision of the District Court, in order to set forth fairly the conclusion reached by it.

"2. Confiscation.

(6) *Scope of Review.*—At the very threshold is the preliminary question: What is the scope of this review? Is the petitioner entitled to the independent judgment of this court as to the law and the facts upon the record made before the Secretary or is this court bound to accept the findings of fact made by the Secretary if they are supported by substantial evidence? * * *

"The latest decision of this question was by a three-judge court for the District of Nebraska. *Union Stock Yards Co.* v. *United States* (D. C.), 9 F. Supp. 864. The case was similar to this. The principal issue was that of confiscation. In the opinion by Circuit Judge Woodrough (Circuit Judge Gardner and District Judge Munger concurring) the court said (9 F. Supp. 864, loc. cit. 873): 'Our judicial function does not go beyond the decision of the constitutional question whether the rates as fixed are confiscatory. His (the Secretary's) findings of fact supported by substantial testimony are not subject to review.' * * *

"When it is said that an independent judgment must be reached by the court, it is meant that the court's findings must be determined by the weight of the evidence and not by a consideration as to whether the findings of the administrative agency are supported by substantial evidence or are arbitrary. A finding may well be supported by substantial evidence and still be against the weight of the evidence. * * * (Footnote, p. 327).

"Findings of fact made by the Secretary of Agriculture in a proceeding under the Packers and Stockyards Act are made conclusive by statute. * * *

"The contention is that the phrase 'judicial power' includes the exclusive power finally to decide all issues of fact in a case where a constitutional right is claimed to have been violated. But it is not contended that it includes that exclusive power where a constitutional right is not claimed to have been violated. A case of the latter character may be quite as important to the litigant as a case of the former character and may involve as much. No good reason can be given for this distinction. 'In respect to the question * * * of the finality to be accorded administrative findings

> of fact * * * I see no reason for making special exception as to issues of constitutional right, * * * said Mr. Justice Brandeis (Mr. Justice Stone and Mr. Justice Roberts concurring) in his dissenting opinion in *Crowell* v. *Benson*, 285 U. S. 22, 80, 52 S. Ct. 285, 303, 76 L. ed. 598.
>
> "Upon this phase of the case our view coincides with that expressed by the learned justice of the Supreme Court as thus set out and with that of Circuit Judge Woodrough in *Union Stock Yards* v. *United States, supra.*"

The decision of the District Court is fair in this respect, that, having determined this point adversely to appellant, it is made clear throughout the remainder of the opinion, in dealing with issues involving confiscation, that the District Court was going no further than to ascertain whether there was some evidence to sustain the Secretary; that the District Court, far from giving weight to or considering the evidence of appellant, *did not even weigh the evidence of the Secretary in order to decide whether the Secretary's evidence sustained the conclusions stated,* much less decide between the conflicting evidence of appellant and the Secretary. It will be noted by reference to page 338, paragraph 2 of the decision, (11 Fed. Supp.) that *the District Court did not even decide the law question raised by appellant as to whether, where the Secretary finds unjust discrimination, he must afford appellant an alternative method of removal.*

Appellant asserts that if, instead of the very limited review afforded by the District Court, appellant had had the benefit of the court's independent judgment upon the law and the facts, as disclosed in the record before the court (which was the entire record before the Secretary), the decree of the court, instead of dismissing appellant's petition, must necessarily have enjoined the Secretary's order; and that, in denying appellant the independent judgment of the court upon the law and the facts,

the court deprived appellant of a constitutional right guaranteed by the fifth amendment, as declared by this court in many decisions. It is to be regretted that, because of this action by the District Court, a much more complete discussion of the evidence is necessary in this court than would otherwise be required.

Importance of the question. It is important that this point should be decided on this appeal for two reasons: (1) there is a division of opinion upon this point in the decisions of the district courts; and (2) similar litigation is arising from time to time.

(1) *Conflict of decisions in district courts.* In *Denver Union Stock Yard Co.* v. *United States,* 57 F. (2d) 735, by a three-judge court of the District of Colorado, this point was decided (see page 739), and the court held that it was within its power and duty to weigh the evidence and decide accordingly. The order of the Secretary was set aside. In *American Commission Co.* v. *United States,* 11 F. Supp. 965, the same conclusion was reached by the same court, but the bill was dismissed upon the ground that it did not make out a case of confiscation.

In the first decision in this proceeding, *St. Joseph Stock Yards Co:* v. *United States,* 58 F. (2d) 290, (western district of Missouri, St. Joseph division), a majority of the court was of opinion that the court "must for itself determine from the weight of the evidence in the case the issues of fact which may be involved in it." (See footnote page 295.) In the second decision in this proceeding, which is the subject of this appeal, the three-judge court for the *same district* and *same division* reversed the decision just cited.

In *Union Stock Yards Co. of Omaha* v. *United States,* 9 F. Supp. 864, at page 875, the court (district of Nebraska,

Omaha division) held that the plaintiff was *not* entitled to the independent judgment of the court upon the law and the facts. In said decision the District Court at Omaha cited in support of its conclusion upon this point certain decisions which had been made under the *interstate commerce act.* None of those decisions involved confiscation. To establish this point, we refer briefly to the cases cited by the District Court in the *Omaha case* in order to show that they are not authority for the proposition stated in that decision.

Florida v. *United States,* 292 U. S. 1, 78 L. ed. 1077, involved an order which *increased* the carriers' revenues; the second case, *Merchants Warehouse Co.* v. *United States,* 283 U. S. 501, 75 L. ed. 1227, involved an attack by a *shipper* upon an order finding a railroad guilty of discrimination; the third case, *Assigned Car Cases,* 274 U. S. 564, 71 L. ed. 1204, involved an order requiring carriers to remove discrimination in the assignment of coal cars to mines; the fourth case, *United States* v. *Louisville & N. R. Co.,* 235 U. S. 314, 59 L. ed. 245, upheld an order of the Interstate Commerce Commission, which in effect *increased* the carriers' rates; the fifth case, *Interstate Commerce Com.* v. *Louisville & N. R. Co.,* 227 U. S. 88, 57 L. ed. 431, involved an order of the Interstate Commerce Commission reducing a limited number of specific rates between certain points, but there was no allegation or proof of confiscation; the sixth case, *Skinner & Eddy Corp.* v. *United States,* 249 U. S. 557, 63 L. ed. 772, involved the validity of an order of the Commission authorizing an *increase* in railroad rates; the seventh case, *Seaboard Air Line Railway Co.* v. *United States,* 254 U. S. 57, 65 L. ed. 129, involved the validity of an order of the Commission requiring railroads to eliminate discrimination in switching absorptions; the eighth case, *New England Divisions Case,* 261 U. S. 184, 67 L. ed. 605, involved an order of the Commission changing divi-

sions of joint through rates between certain carriers and did not involve confiscation; the ninth case, *Western Paper Makers' Chemical Co.* v. *United States,* 271 U. S. 268, 70 L. ed. 941, involved an order of the Commission prescribing rates on rosin between certain points, but the carriers against whom the order ran were not parties to the action.

None of these cases involved the issue of confiscation in the sense of allegation and proof that a net income was fixed below that permitted to the administrative tribunal under the Constitution; or that values were fixed which were substantially below the real and true values.

(2) *Similar litigation is arising.* This is the first case to come before this court under the *Packers and Stockyards Act, 1921,* in which the Secretary has prescribed reduced charges to be applied by a public stockyards and confiscation is alleged. A substantial number of such cases are now in progress of investigation, amongst which the following may be mentioned: docket No. 305, *Secretary of Agriculture* v. *Kansas City Stock Yards Co.,* Kansas City, Mo.; docket No. 306, *Secretary of Agriculture* v. *St. Louis National Stock Yards,* National Stock Yards, Ill.; docket No. 450, *Secretary of Agriculture* v. *Denver Union Stock Yard Co.,* Denver, Colo.; docket No. 472, *Secretary of Agriculture* v. *Union Stock Yard & Transit Co.,* Chicago, Ill. (See "The Monthly Record", issued by the Packers and Stockyards Division, Bureau of Animal Industry, United States Department of Agriculture, Vol. 12, No. 9.)

It is, therefore, of public importance that the correct rule be determined by this court for the guidance of the Governmental authorities as well as the public stockyards. So long as there is confusion upon this point it is difficult for counsel for the parties to know upon what theory the cases should be tried either before the Secretary or in the district courts.

AN UNBROKEN LINE OF DECISIONS OF THIS COURT INDICATES THE ERROR OF THE DISTRICT COURT.

The cases cited at the commencement of this chapter are all cases in which this Court exercised its independent judgment upon the law and the facts or stated the doctrine for which appellant here contends. For convenience, we here summarize those cases briefly.

In *Knoxville* v. *Knoxville Water Co.*, 212 U. S. 1, 8, 53 L. ed. 371, this Court said:

> "The constitutional invalidity should be manifest, and where that invalidity rests upon disputed questions of fact, the invalidating facts must be proved to the satisfaction of the court. * * * The power is best safeguarded against abuse by preserving to this court complete freedom in dealing with the facts of each case."

In *Oklahoma Operating Co.* v. *Love*, 252 U. S. 331, 335, 64 L. ed. 596, this Court said:

> "The order of the Commission prohibiting the company from charging, without its permission, rates higher than those prevailing in 1913, in effect prescribed maximum rates for the service. It was, therefore, a legislative order; and under the 14th Amendment plaintiff was entitled to an opportunity for a review in the courts of its contention that the rates were not compensatory."

In *Ohio Valley Water Co.* v. *Ben Avon Borough*, 253 U. S. 287, 289, 64 L. ed. 908, this Court said:

> "The order here involved prescribed a complete schedule of maximum future rates and was legislative in character. * * * In all such cases, if the owner claims confiscation of his property will result, the state must provide a fair opportunity for submitting that issue to a judicial tribunal for determination upon its own independent judgment as to both law and facts; otherwise the order is void because in conflict with the due process clause, 14th Amendment."

The following statement is found in *Prendergast* v. *New York Teleph. Co.*, 262 U. S. 43, 50, 67 L. ed. 853:

> "The sole issue presented was whether or not the orders were confiscatory; which was to be determined by the court upon the evidence submitted to it."

In *Bluefield W. W. & Improv. Co.* v. *Public Service Com.*, 262 U. S. 679, 683, 67 L. ed. 1176, the Court said:

> "If, as alleged, the prescribed rates are confiscatory, the order is void. Plaintiff in error is entitled to bring the case here on writ of error and to have that question decided by this court. The motion to dismiss will be denied."

In *Northern P. R. Co.* v. *Department of Public Works*, 268 U. S. 39, 69 L. ed. 836, this Court reviewed the evidence and expressed its own judgment thereon.

This rule as to the scope of the court review was again stated in *Lehigh Valley R. Co.* v. *Board of Public Utility Comrs.*, 278 U. S. 24, 36, 73 L. ed. 161, as follows:

> "This court held on error that because the plaintiff in error had not had proper opportunity for an adequate independent judicial hearing as to confiscation on the law and the facts, the challenged order was invalid, and that the judgment of the supreme court of the state must be reversed."

This rule was again stated by this Court in *United R. & Electric Co.* v. *West*, 280 U. S. 234, 251, 74 L. ed. 390:

> "The court in the discharge of its constitutional duty on the issue of confiscation must determine the amount to the best of its ability in the exercise of a fair enlightened and 'independent judgment as to both law and facts.'"

In *Phillips* v. *Commissioner of Internal Revenue*, 283 U. S. 589, 600, 75 L. ed. 1289, this Court said:

> "Save as there may be an exception for issues presenting claims of constitutional right, such administrative findings on issues of fact are accepted by the court as conclusive if the evidence was legally sufficient to sustain them and there was no irregularity in the proceedings."

In *Chicago, R. I. & P. R. Co.* v. *United States*, 284 U. S. 80, 76 L. ed. 177, this Court substituted its own judgment for that of the Commission upon a question involving confiscation and stated "an infringement upon the right of ownership constitutes a violation of the due process clause of the 5th Amendment."

In *Crowell* v. *Benson*, 285 U. S. 22, 57, 76 L. ed. 598, this court said:

> "The recognition of the utility and convenience of administrative agencies for the investigation and finding of facts within their proper province, and the support of their authorized action, does not require the conclusion that there is no limitation of their use, and that the Congress could completely oust the courts of all determinations of fact by vesting the authority to make them with finality in its own instrumentalities or in the Executive Department. That would be to sap the judicial power as it exists under the Federal Constitution, and to establish a government of a bureaucratic character alien to our system, *wherever fundamental rights depend, as not infrequently they do depend, upon the facts, and finality as to facts becomes in effect finality in law.*" (Emphasis ours).

In *Norwegian Nitrogen Prod. Co.* v. *United States*, 288 U. S. 294, 318, 77 L. ed. 796, this Court said:

> "It is very different, however, when orders are directed against public service corporations limiting their powers in the transaction of their business. They may be challenged in the courts if the effect is to reduce the charges to the point of confiscation."

In *Lindheimer* v. *Illinois Bell Teleph. Co.*, 292 U. S. 151, 78 L. ed. 1182, this Court made findings of fact of its own which differed from those made by the state commission and from those made by the United States District Court.

In *Dayton P. & L. Co.* v. *Public Utilities Commission*, 292 U. S. 290, 78 L. ed. 1267, although this Court affirmed the order of the Ohio Public Utilities Commission, it examined the evidence and made its own findings.

In *Columbus Gas & Fuel Co.* v. *Public Util. Com.*, 292 U. S. 398, 78 L. ed. 1327, this Court made certain findings of fact of its own and reversed the decision of the Ohio Commission upon the ground that it had made an inadequate provision in operating expenses for replenishing the wasting assets of the company.

In *West Ohio Gas Co.* v. *Public Utilities Com.*, 294 U. S. 79, 79 L. ed. 773, a case where confiscation was alleged, this Court substituted its judgment for that of the commission and set aside the order largely because the reduced rates were based upon prophecy rather than experience.

In *United States* v. *Chicago, M., St. P. & P. R. Co.*, 294 U. S. 499, 79 L. ed. 1023, this Court expressed its independent judgment upon the law and the facts and, for reasons there stated, set aside the order of the Interstate Commerce Commission.

In *Atchison, T. & S. F. R. Co.* v. *United States*, 295 U. S. 193, 79 L. ed. 1382, this Court undoubtedly exercised its independent judgment upon both the law and the facts in the opinion in which it set aside the order of the Interstate Commerce Commission and reversed the decision of the District Court.

In *West* v. *Chesapeake & P. Teleph. Co.*, 295 U. S. 662, 79 L. ed. 1640, this Court passed *sub silentio* the question of its right to exercise its independent judgment upon the law and the facts, but in the decision below (*Chesapeake & Potomac Telephone Co.* v. *West*, 7 F. Supp. 214) that was one of the contested points. Upon that point, the District Court had said (at page 230):

> "Counsel for the Commission contend that the court may not disturb the Commision's valuation unless the Company has proved *beyond a reasonable doubt* 'that the Commission has been wrong to such an extreme degree that in the light of all present circumstances, no reasonable body of men could have reached such a

> conclusion.' But the law is otherwise. On the issue of confiscation the Court must exercise its own independent judgment of law and fact."

The decision of this Court affirmed the decree of the District Court.

It cannot be successfully argued that *Tagg Bros. & Moorhead* v. *United States,* 280 U. S. 420, 74 L. ed. 524, constitutes any exception to this rule. The point was passed in that case because it was believed that confiscation had not been established, the Court saying:

> "The validity of an order of the Secretary, like that of an order of the Interstate Commerce Commission, must be determined upon the record of the proceedings before him—save as there may be an exception of issues presenting claims of constitutional right, a matter which need not be considered or decided now."

Atlanta, B. & C. R. Co. v. *United States,* ..... U. S. ....., 80 L. ed. (Adv. Ops.) 25, decided November 11, 1935, did not involve the issue of confiscation.

There has been an unbroken line of decisions since the *Knoxville case* in 1909 down to the *West case* at the end of the last term, holding that, under circumstances such as are here disclosed, appellant is entitled to the independent judgment of the court upon the law and the facts in so far as issues of confiscation are involved. The District Court made it plain that it was denying appellant such a review in this case. It is respectfully submitted that in so doing it erred and, because of this error, if no other ground existed, it would be necessary to reverse the decision of the District Court.

II.

SUMMARY OF CERTAIN ADDITIONAL GROUNDS FOR REVERSAL OF DECREE.

Aside from the error alleged because of the failure of the District Court to exercise its independent judgment upon the law and the facts, it is the contention of appellant that, even confining the court review to the narrowest limits that have been stated where confiscation is *not* an issue, and using solely facts as to income, expenses, value of land and structures, etc., determined by the Secretary or fixed by his witnesses, the decision and order are void.

The rules here alleged to have been violated are drawn from the decisions cited below.

Interstate Commerce Com. v. *Northern P. R. Co.*, 216 U. S. 538, 54 L. ed. 608.

Interstate Commerce Com. v. *Louisville & N. R. Co.*, 227 U. S. 88, 57 L. ed. 431.

Florida E. C. R. Co. v. *United States*, 234 U. S. 167, 58 L. ed. 1267.

Great Northern R. Co. v. *Minnesota*, 238 U. S. 340, 59 L. ed. 1337.

Missouri Ex Rel. S. W. Bell T. Co. v. *Public Serv. Com.*, 262 U. S. 276, 67 L. ed. 981.

Board of Public Utility Comrs. v. *New York Teleph. Co.*, 271 U. S. 23, 70 L. ed. 808.

McCardle v. *Indianapolis Water Co.*, 272 U. S. 400, 71 L. ed. 316.

Tagg Bros. & Moorhead v. *United States*, 280 U. S. 420, 74 L. ed. 524.

Beaumont, S. L. & W. R. Co. v. *United States*, 282 U. S. 74, 75 L. ed. 221.

Florida v. *United States*, 282 U. S. 194, 75 L. ed. 291.

Southern R. Co. v. *Virginia,* 290 U. S. 190, 78 L. ed. 260.

West Ohio Gas Co. v. *Public Utilities Com.,* 294 U. S. 79, 79 L. ed. 773.

United States v. *Baltimore & O. R. Co.,* 293 U. S. 454, 79 L. ed. 587.

United States v. *Chicago, M., St. P. & P. R. Co.,* 294 U. S. 499, 79 L. ed. 1023.

Atchison, T. & S. F. R. Co. v. *United States,* 295 U. S. 193, 79 L. ed. 1382.

Schechter v. *United States,* 295 U. S. 495, 79 L. ed. 1570.

A.

A PREREQUISITE TO THE REDUCTION OF RATES IS EVIDENCE WHICH WILL SUPPORT A FINDING THAT PRESENT RATES ARE UNREASONABLE.

"The authority of the Commission to establish through routes and joint rates is conditioned by the proviso that 'no reasonable or satisfactory through route exists.' • • • We are of opinion, then, that the Commission had no power to make the order *if a reasonable and satisfactory through route already existed,* and that the existence of such a route may be inquired into by the courts. • • • The condition in the statute is not to be trifled away." *Interstate Commerce Com.* v. *Northern P. R. Co.,* 216 U. S. 538, 543, 544, 545, 54 L. ed. 608, 609. (Emphasis ours.)

"Under the statute the carrier retains the primary right to make rates, but if, after hearing, they are shown to be unreasonable, the Commission may set them aside and require the substitution of just for unjust charges. The Commission's right to act depends upon the existence of this fact, *and if there was no evidence to show that the rates were unreasonable there was no jurisdiction to make the order. Interstate Commerce Commission* v. *Northern P. R. Co.* 216 U. S. 544, 54 L. ed. 609, 30 Sup. Ct. Rep. 417. • • • the legal effect of evidence is a question of law. A finding without evidence is beyond the power of the Commission. An order based thereon is contrary to law, and

must, in the language of the statute, be 'set aside by a court of competent jurisdiction.' 36 Stat. at L. 551, chap. 309." *Interstate Commerce Com.* v. *Louisville & N. R. Co.*, 227 U. S. 88, 92, 57 L. ed. 431, 433, 434. (Emphasis ours.)

"The Commission may not change an existing division unless it finds that division unjust or unreasonable." *Beaumont, S. L. & W. R. Co.* v. *United States*, 282 U. S. 74, 82, 75 L. ed. 221, 228.

B.

AN ORDER MADE WITHOUT EVIDENCE, OR UPON EVIDENCE WHICH CLEARLY DOES NOT SUPPORT IT, IS VOID.

"While a finding of fact made by the Commission concerning a matter within the scope of the authority delegated to it is binding, and may not be re-examined in the courts, it is undoubted that where it is contended that an order whose enforcement is resisted was rendered *without any evidence whatever to support it*, the consideration of such a question involves not an issue of fact, but one of law, which it is the duty of the courts to examine and decide. *Interstate Commerce Commission* v. *Louisville & N. R. Co.* 227 U. S. 88, 91, 92, 57 L. ed. 431, 433, 434, 33 Sup. Ct. Rep. 185, and cases cited." *Florida E. C. R. Co.* v. *United States*, 234 U. S. 167, 185, 58 L. ed. 1267, 1271, 1272. (Emphasis ours.)

"The facts being established, the question then presented is whether, as matter of law, they are adequate to support a finding of requisite public necessity,—*the mere declaration of a commission is not conclusive.*" *Great Northern R. Co.* v. *Minnesota*, 238 U. S. 340, 345, 59 L. ed. 1337, 1339. (Emphasis ours.)

"It has been settled in cases arising under the Interstate Commerce Act that if an order rests upon an erroneous rule of law (*Interstate Commerce Commission* v. *Diffenbaugh*, 222 U. S. 42, 56 L. ed. 83, 32 Sup. Ct. Rep. 22), *or is based upon a finding made without evidence* (*Chicago Junction case* (*Baltimore & O. R. Co.* v. *United States*) 264 U. S. 258, 263, 68 L. ed. 667, 673, 44 Sup. Ct. Rep. 317), *or upon evidence which clearly does not support it* (*Interstate Commerce Commission* v. *Union P. R. Co.* 222 U. S. 541, 547, 56 L. ed. 308, 311, 32 Sup. Ct. Rep. 108; *New*

England Divisions Case (*Akron, C. & Y. R. Co.* v. *United States*) 261 U. S. 184, 203, 67 L. ed. 605, 615, 43 Sup. Ct. Rep. 270; *Colorado* v. *United States*, 271 U. S. 153, 166, 70 L. ed. 878, 884, 46 Sup. Ct. Rep. 452), the order must be set aside. These rules are applicable also to suits arising under the Packers and Stockyards Act." *Tagg Bros. & Moorhead* v. *United States*, 280 U. S. 420, 442, 74 L. ed. 524, 536. (Emphasis ours.)

"There is an obvious difference between legislative determination and the finding of an administrative official *not supported by evidence.*" *Southern R. Co.* v. *Virginia*, 290 U. S. 190, 197, 78 L. ed. 260, 266. (Emphasis ours.)

"That administrative agency, in dealing with particular cases, is required to act upon notice and hearing, and *its orders must be supported by findings of fact which in turn are sustained by evidence.*" *Schechter* v. *United States*, 295 U. S. 495, 539, 79 L. ed. 1570, 1585. (Emphasis ours.)

C.

THE PRESCRIBED RATES MUST BE REASONABLE, AND THE CONDEMNED RATES UNREASONABLE, AT THE TIME OF THE HEARING.

"There must be a fair return upon the reasonable value of the property *at the time it is being used for the public.*" *Missouri Ex Rel. S. W. Bell T. Co.* v. *Public Serv. Com.*, 262 U. S. 276, 287, 67 L. ed. 981, 984, 985. (Emphasis ours.)

"The just compensation safeguarded to the utility by the 14th Amendment is a reasonable return on the value of the property used *at the time that it is being used for the public service.*" *Board of Public Utility Comrs.* v. *New York Teleph. Co.*, 271 U. S. 23, 31, 70 L. ed. 808, 812. (Emphasis ours.)

"It must be determined whether the rates complained of are yielding and will yield, over and above the amounts required to pay taxes and proper operating charges, a sum sufficient to constitute just compensation for the use of the property employed to furnish the service; that is, *a reasonable rate of return on the value of the property at the time of the investigation and for a reasonable time in the immediate future.*" *McCardle* v. *Indianapolis Water Co.*, 272 U. S. 400, 408, 409, 71 L. ed. 316, 324. (Emphasis ours.)

D.

THE DECISION IS VOID IF IT DOES NOT CONTAIN BASIC OR ESSENTIAL FINDINGS WHICH SUPPORT THE ORDER.

"The Commission's failure specifically to report the facts and give the reasons on which it concluded that under the circumstances the use of the average or group basis is justified leaves the parties in doubt as to a matter essential to the case and imposes unnecessary work upon the courts called upon to consider the validity of the order. Complete statements by the Commission showing the grounds upon which its determinations rest are quite as necessary as are opinions of lower courts setting forth the reasons on which they base their decisions in cases analogous to this. *Wichita R. & Light Co.* v. *Public Utilities Commission,* 260 U. S. 48, 58, 67 L. ed. 124, 130, 43 S. Ct. 51. And we have recently emphasized the duty of such courts fully to state the grounds upon which they act." *Beaumont S. L. & W. R. Co.* v. *United States,* 282 U. S. 74, 86, 75 L. ed. 221, 230. (Emphasis ours.)

"The question is not merely one of the absence of elaboration or of a suitably complete statement of the grounds of the Commission's determination, to the importance of which this court has recently adverted (*Beaumont, S. L. & W. R. Co.* v. *United States,* decided November 24, 1930, 282 U. S. 74, ante, 221, 51 S. Ct. 1), *but of the lack of the basic or essential findings required to support the Commission's order. In the absence of such findings, we are not called upon to examine the evidence in order to resolve opposing contentions as to what it shows or to spell out and state such conclusions of fact as it may permit.* The Commission is the fact-finding body and the court examines the evidence not to make findings for the Commission but to ascertain whether its findings are properly supported." *Florida* v. *United States,* 282 U. S. 194, 215, 75 L. ed. 291, 304. (Emphasis ours.)

"It is true that formal and precise findings are not required, under § 14 (1) of the Interstate Commerce Act, which declares that the report 'shall state the conclusions of the Commission together with its decision.' • • • That provision relieves the Commission from making comprehensive findings of fact similar to those required by Equity Rule 70½. *But § 14 (1) does not remove the necessity of*

making, where orders are subject to judicial review, quasi-jurisdictional findings essential to their constitutional or statutory validity.'' United States v. *Baltimore & O. R. Co.,* 293 U. S. 454, 465, 79 L. ed. 587, 595. (Emphasis ours.)

"The difficulty is that it (Interstate Commerce Commission) has not said so with the simplicity and clearness through which a halting impression ripens into reasonable certitude. *In the end we are left to spell out, to argue, to choose between conflicting inferences. Something more precise is requisite in the quasi-jurisdictional findings of an administrative agency.'' United States* v. *Chicago, M., St. P. & P. R. Co.,* 294 U. S. 499, 510, 511, 79 L. ed. 1023, 1032. (Emphasis ours.)

"In the absence of a finding of essential basic facts, the order cannot be sustained. Florida v. *United States,* 282 U. S. 194, 215, 75 L. ed. 291, 304, 51 S. Ct. 119. Recently this court has repelled the suggestion that lack of express finding by an administrative agency may be supplied by implication.'' *Atchison, T. & S. F. R. Co.* v. *United States,* 295 U. S. 193, 202, 79 L. ed. 1382, 1390. (Emphasis ours.)

E.

THE ORDER IS VOID IF BASED UPON MERE PROPHECY.

"But prophecy, however honest, is generally a poor substitute for experience. * * * We have said of an attempt by a utility to give prophecy the first place and experience the second that 'elaborate calculations which are at war with realities are of no avail.' * * * We say the same of a like attempt by officers of government prescribing rates to be effective in years when experience has spoken. A forecast gives us one rate. A survey gives another. *To prefer the forecast to the survey is an arbitrary judgment.'' West Ohio Gas Co.* v. *Public Utilities Com.,* 294 U. S. 79, 82, 79 L. ed. 773, 776. (Emphasis ours.)

III.

THE ORDER IS VOID BECAUSE THE FINDINGS NECESSARY TO SUPPORT IT ARE NOT STATED IN THE DECISION OF THE SECRETARY; NOR ARE SUCH FINDINGS SUPPLIED IN THE DECISION OF THE DISTRICT COURT.

This contention is covered by point 17 of our statement of points to be relied upon (R. 941) and by the assignments of error therein referred to. In presenting this contention, we are relying upon the rule announced by this Court in the cases cited on pp. 27-28 of this brief.

All of these cases arose upon appeals under the *interstate commerce act*. That act is, by § 217, U. S. C. A. tit. 7, made applicable to review of the decisions of the Secretary of Agriculture. Consequently, the same rule must apply in this case.

We first contend that the order is void because the decision does not contain the "basic or essential findings" required to support it. Neither does the opinion of the District Court, although each group of facts here stated was presented to the District Court in substantially the same manner, and it was urged to make appropriate findings thereon.

BASIS FOR THE FINDING OF UNREASONABLENESS.

In order that the Court may appreciate the force of this contention, it is necessary first to state the basis upon which the reduction in rates was ordered by the Secretary.

1. No effort was made by the Secretary or the Government witnesses to obtain the costs of *specific* services, such as yarding cattle, yarding hogs, yarding sheep, or the difference between the cost of yarding live stock received by rail and by truck, the cost of feeding live stock, of loading

and unloading railroad cars, of maintenance of the exchange Building, etc. This was so stated by the Government auditor in the portion of his testimony quoted at pp. 62, 63 of this brief.

2. The theory upon which the Secretary acted in declaring that appellant's rates are unreasonable is stated as follows in paragraph 40 of the decision (R. 45):

> "A test of the reasonableness of the rates now being charged by respondent is whether the revenue produced by them is substantially in excess of the amount necessary to pay the reasonable cost of rendering the services for which those rates are charged, including in such costs a fair return upon the fair value of respondent's property used and useful in the rendition of such services. A test of the reasonableness of rates to be prescribed, if those now being charged by respondent be found to be unreasonable, is whether the revenue reasonably to be anticipated from them are sufficient to pay the aforesaid reasonable costs of rendering the services. To the end that these facts may be determined, it is necessary to ascertain from the evidence (1) the property used and useful in the rendition of the services; (2) the fair value of that property; (3) the fair return on that fair value; (4) respondent's reasonable operating expenses; and (5) the volume of business reasonably to be anticipated for respondent in the immediate future."

For the purpose of this point, we need not discuss the propriety of the theory stated by the Secretary. Suffice it to say that it is the theory, and the only one, upon which the Secretary acted.

3. The only statements contained in the Secretary's decision indicating how he reached the conclusions carried into the order are found in paragraphs 168 and 206 of his decision and read as follows:

> "The rates hereafter prescribed in this order are based upon detailed studies of the financial operations of the business of the respondent during this six-year period, and upon a consideration of the history of the

company and other facts with respect to it extending over a much longer period." (Par. 168, Secretary's decision, R. 115.)

"An application of the rates now being charged by the respondent to the volume of business hereinbefore discussed produces revenues in excess of those necessary to pay the reasonable expenses incurred in handling that business and a fair return upon the fair value of respondent's property." (Par. 206, Secretary's decision, R. 128.)

In the foregoing quotation from paragraph 206, the "volume of business *hereinbefore discussed*" refers *not to the volume of business being done by appellant at the time of the hearing* but to the much larger volume predicted by the Secretary for the future in paragraphs 201, 203, 204, and 208 of the decision (R. 126, 127, 129). For a comparison of those estimates with the actual business at the time of the hearing, see pp. 71, 72 of this brief.

Inasmuch then as the test adopted by the Secretary, and the only test, is whether the rates charged by appellant produced in totality a sum in excess of 7 per cent upon the value determined by the Secretary, after deduction of reasonable operating expenses, we point out the complete lack of specific findings to support the conclusions stated in paragraph 206 of the decision. Recalling that the only test is whether the revenue from stockyards services exceeds the cost of operation, plus a fair return:

(a) *The decision contains no finding which sets forth appellant's gross operating income from stockyards services in 1932, the last year covered by the record; no finding of appellant's net operating revenue for that year; no finding as to what, if any, return upon the fair value of appellant's property resulted from the rates maintained by appellant, or would have resulted from the rates prescribed by the Secretary.* This is a "basic or essential finding" necessary to support the conclusion. The order

"must be supported by findings of fact which, in turn, are sustained by evidence."

The Secretary finds that the fair return to appellant should be $192,010 per annum. For aught that appears in any of his findings, appellant's income in 1932 might have been $90,010 or $290,010. If the former, it plainly precluded a reduction of charges; if the latter, under the theory followed by the Secretary, the charges might have been reduced. *No findings of fact of this nature are made.* As we demonstrate later from the evidence, the prescribed rates for 1932 would have produced a net income, after operating expenses, of $81,026 or 2.95 per cent upon the fair value of $2,743,000 determined by the Secretary.

But the Secretary says (par. 168 of decision, R. 115), that the prescribed rates are based upon "detailed studies of the financial operations of the business of the respondent during the six-year period, and upon a consideration of the history of the company and other facts with respect to it extending over a much longer period." What these financial operations during the six-year period may have been and what the other facts extending over a much longer period may have been are not included in any finding in this decision. Consequently, we call attention to the following as the second group of essential of basic facts which are not contained in any finding.

(b) *The Secretary's decision contains no finding as to appellant's gross income from stockyards services in the period 1927-1932; it contains no finding as to appellant's net operating revenue from stockyards services, for the same period; no finding as to what, if any, return was made by appellant upon the fair value of its property during the period 1927-1932; no finding as to what return, if any, would have been made by appellant upon the fair value of the property as determined by the Secretary in the present*

decision, or upon the higher value determined in the first decision (appendix to brief, pp. 10, 50) *if the rates prescribed by the Secretary had been in effect.*

Such a finding upon the part of the Secretary was indeed called for in view of the decision in *St. Joseph Stock Yards Co.* v. *United States,* 58 F. (2d) 290, wherein it was specifically found that the rates prescribed by the Secretary would have produced a confiscatory return in 1930 and the first half of 1931. In the absence of such a finding by the Secretary, the District Court should have made the findings required by the evidence. For aught that appears in the Secretary's decision or that of the District Court, appellant's net operating income during the six years prior to the hearing might have produced a return of 7 per cent, of 1 per cent, or of 15 per cent. No finding in respect thereto is contained in the decision of the Secretary or the District Court. Yet, upon the Secretary's theory of the case, no reduction could have been made unless appellant had been obtaining from the totality of its charges an amount greater than a fair return. *This again was a basic or essential finding which was omitted.* We show, at page 58 of this brief, that the net return of appellant for the period 1927-1931, under the prescribed rates, would have been only 4.3 per cent of the value of the property used and useful for stockyards services as determined by the Secretary in his first decision of July 20, 1931 (appendix to brief, p. 50).

(c) *The decision contains no findings which support the specific reductions in differing amounts prescribed in paragraph 207 of the decision* (R. 128), nor was any evidence offered on which such findings could have been supported. See pp. 60-69 of this brief. Perhaps this point should be illustrated. The Secretary ordered a reduction in the yardage charge on hogs received by rail from 12 cents to 8 cents

per head, amounting to 4 cents per head, or a reduction of 33 per cent; while he ordered a reduction on hogs received by truck from 14 cents to 12 cents per head, amounting to 2 cents per head, or a reduction of 14 per cent; that is to say, that while the present yardage rate on hogs received by rail is 2 cents less than the yardage rate on hogs received by truck, under the prescribed basis the yardage rate on hogs received by rail will be 4 cents less than the yardage rate on hogs received by truck. The fact that there should be a higher yardage rate on hogs received by truck than on hogs received by rail, as well as upon other species of live stock, is justified by the record and acquiesced in by the Secretary, but the Secretary does not preserve the differential of 2 cents heretofore made by appellant.

Paragraph 202 of the decision (R. 126) contains certain remarks concerning the loading and unloading by appellant of live stock received by rail in carload lots. The Secretary points out that the volume received by rail has been diminishing, which is true. The Secretary further points out in said paragraph that appellant's charge for unloading and loading railroad cars (which is received from and paid by the railroad companies) has been increased. As stated in paragraph 44 of the decision (R. 47), the charge for this service is $1.25 per single deck car and $1.50 per double deck car. The Secretary does not state the amount of the increase. The record shows that the charge for unloading and loading railroad cars was increased in September, 1932, from $1.00 per car to $1.25 for single deck cars, and $1.50 for double deck cars (see respondent's exhibit 152, one of the original exhibits certified with this record).

The Secretary, in paragraph 202, concludes with the statement that "the higher rate now in effect will tend to offset somewhat the loss in unloading and loading revenues on account of the change in method of arrival." But simultaneously, and very inconsistently, the Secretary reduces

the yardage charge on hogs arriving by rail by 4 cents per 100 pounds, while the yardage charge on hogs arriving by trucks is reduced only 2 cents per 100 pounds. Thus, if we estimate that 80 hogs are an ordinary load for a single deck car or 120 hogs for a double deck car, the increase in revenue from the increased unloading charge is about $.0037 per head; but against this slight increase from unloading charges the Secretary has reduced the yardage charge on hogs received by rail 4 cents per head, or ten times the amount of the increase in the unloading charge and twice the amount of the reduction on hogs received by truck.

Substantially the same thing applies to cattle. The yardage rate on cattle received by rail is reduced 8 cents and on those received by truck 5 cents. On the other hand, the yardage charge on sheep is reduced 2 cents per head uniformly, whether received by truck or rail.

There are no findings in the decision to sustain the various reductions so made. Such reductions bear no rational relation to each other. No evidence was offered upon which these specific reductions could have been based. Upon the Secretary's own theory the reductions could be made only because he conceived that appellant had earned a total income from stockyards services in excess of a reasonable return. If such a finding could have been made or justified by the evidence, obviously the only order which could have followed would have been a proportionate reduction in all charges made by appellant.

(d) *The decision makes none of the "basic or essential findings" upon which increases ranging from 71 per cent to 660 per cent in the feed lot charges could have been based.* The decision does not state separately the value of the land and facilities of the feed lots, the income from the feed lots, the expenses thereof, or the net profit or de-

ficit from their operation. The new rates are obviously guess work. There is no finding that the class of live stock held at the feed lots or the operators at the feed lots can or will stand the tremendously increased rates. Nor is there any evidence upon which such a finding could be based.

(e) *The decision contains no specific findings, such as those shown at pages 76-81 of this brief, as to appellant's gradually diminishing receipts of live stock from all sources, including reductions in general yardage charges, sale of feed, loading and unloading, miscellaneous income, etc., during the six-year period.* The only finding permitted by the evidence would have negatived the possibility of reducing appellant's rates. In fact the only findings in the decision are to the same effect. The Secretary refers to the market receipts of live stock in paragraph 199 of the decision (R. 125).

Concerning cattle, the following finding is made: "Following 1925 and continuing until 1931, there was a decrease." The table in paragraph 195 shows that the receipts of cattle in 1932 were more than 50,000 head less than in 1931.

Referring to calves, the Secretary finds in paragraph 199 that there has been a decrease, the receipts of 1931 being about equal to 1918.

Concerning hogs, the Secretary says that since 1928 the tendency has been downward (par. 199). The table in paragraph 195 shows that the receipts in 1928 were 1,594,606 and in 1932 1,148,990 or 445,616 head less.

The decision adopts a prophecy as against a survey. This court has recently remarked that such a prophecy is generally a poor substitute for experience. *West Ohio Gas Co.* v. *Public Utilities Com.*, 294 U. S. 79, 82, 79 L. ed. 773, 776.

We are not to be understood as suggesting that the points here summarized are the only ones in which essential findings are lacking. As to other phases of the case, such as the failure to include the Transit House amongst the used and useful property, there is no finding of changed conditions since the first decision. There is no finding of changed conditions which would justify the conclusion that appellant had a going concern value of $300,000 at the time of the first decision and none at the time of the present decision; that the allowance for depreciation, maintenance, and repairs might properly be $102,000 per annum at the time of the first decision and only $80,000 per annum at the time of the second decision; or justifying a reduction of 36 per cent in land values between the first and second decision.

It is respectfully submitted that for the reasons here stated, and under the rules announced by this court in the cases here cited, the order is void because of the lack of "basic and essential findings."

The Decision of the District Court Does Not Contain Specific Findings of Fact Upon Most Points.

Rule 70½ of the equity rules of this Court provides that the three-judge court shall "find the facts specially and state separately its conclusions of law thereon." Appellant suggests that the decision of the District Court does not fairly comply with this rule.

The District Court promulgated its decision on May 1, 1935. It did not follow the practice of permitting counsel, after the decision, to propose specific findings of fact for the purpose of an appeal. It adopted the findings of fact made by the Secretary (with slight exceptions) and stated that its own opinion included all the further necessary findings of fact. Thus the findings of fact which this Court must consider are to be found scattered throughout the decision of the Secretary, consisting

of 208 numbered paragraphs covering about 105 printed pages of the record, and in the opinion of the District Court, covering 28 pages of the record.

The decree was effective the same day the opinion was handed down. Thereafter appellant sought and obtained a suspension of the decree in order to perfect its appeal (R. 142). The application for the appeal was filed with the court and allowed May 24, 1935. Therewith appellant filed a petition for supplemental findings of fact and conclusions of law (R. 142). That was the earliest time at which it was possible for appellant to call the attention of the court to the fact that it believed that certain important and fundamenal findings had been omitted from the decision. Assuming that the findings would not be made by the court as submitted, appellant also submitted a proposed order permitting said proposed findings to be filed as of May 1, 1935, the date of the decision, and refusing as of that date to make such findings (R. 146). In a letter of June 20, 1935, Judge Merrill E. Otis advised counsel for appellant that "the court does not believe that the order asked by you should be made" (R. 166).

The findings of fact which appellant believes should have been made by the court are a part of the "petition for supplemental findings of fact and conclusions of law", appearing at record 142. It was not possible for appellant to assign error to the refusal of the court to make these findings because the assignments of error had to be filed with the petition for appeal, and the court did not deny the petition for supplemental findings of fact and conclusions of law until approximately a month after the petition for appeal had been filed and allowed.

IV.

THE DISTRICT COURT ERRED IN FAILING TO FIND THAT THE ORDER WAS VOID BECAUSE APPELLANT'S RATES AND CHARGES WERE NOT UNREASONABLE AT THE TIME OF THE HEARING.

Essential facts in connection with this point. The alleged errors of the District Court are set forth more in detail in points 9 and 11 of our statement of points to be relied upon and in the assignments of error referred to in those points (R. 940). The essential facts may be summarized briefly, although the verification of those facts will require some explanation as they are not in any findings in the Secretary's decision, nor in any finding in the opinion of the District Court:

(1) The last year covered by the hearing before the Secretary was 1932 (R. 26).

(2) In paragraph 171 of the decision (R. 116), the Secretary finds that the reasonable annual net operating income which should be obtained by appellant from the operation of its public stockyards is $192,010.

(3) The net operating income obtained by appellant in 1932 under its *present rates,* determined according to the expenses allowed and disallowed by the Secretary, was only $190,656.21, or less than the fair return determined by the Secretary. This undisputed fact is not stated in the decision of the Secretary or in the opinion of the District Court.

Verification of preceding statements of fact. For the purpose of this point only, and without admitting the correctness of the conclusions reached by the Secretary, we here concede every fact found by the Secretary as to the amount of used and useful property, land values, structural values, annual allowance for a depreciation reserve, denial of going concern value, elimination of cer-

tain operating expenses, etc. As to them, error is assigned and the points will be argued in other sections of this brief.

As a basis for the analysis which follows, we here insert a computation showing the results upon appellant's revenues if the yardage, feed, and resale charges, prescribed by the Secretary, had been in effect during the year 1932, the last year covered by the record. The number of head of live stock received will be found in Government exhibit 111, witness Christensen, and the revenue receipts from the yardage charges in force appear in exhibits 121-A, 121-B, and 121-C of Government witness Bufkin; all of which have been certified as original exhibits to this court. The page here inserted is merely a mathematical computation in which the *reduced* rates prescribed by the Secretary are applied to the 1932 business of appellant. The same table was printed in our brief in the District Court and its accuracy was not questioned there.

REDUCTION PRESCRIBED RATES WOULD HAVE MADE IN APPELLANT'S GROSS INCOME IN YEAR 1932.

Line No.	Items	Revenue Units	Rate Charged	Amount	Prescribed Rates	Income from Prescribed Rates	Reduction
1.	Rail Receipts						
2.	Cattle	162,278	$ .35	$ 56,797.30	$ .27	$ 43,815.06	$ 12,982.24
3.	Calves	16,375	.25	4,093.75	.17	2,783.75	1,310.00
4.	Hogs	75,297	.12	9,035.64	.08	6,023.76	3,011.88
5.	Sheep	971,268	.08	77,701.44	.06	58,276.08	19,425.36
6.	Horses & Mules	17	.35	5.95	.35	5.95	.....
7.	Rail Receipts Car Loads						
8.	Calves (1)	93	80/.25	20.00	.17	15.81	4.19
9.	Hogs (6)	712	125/.12	90.00	.08	56.96	33.04
10.	Truck-In-Receipts						
11.	Cattle	181,186	.40	72,474.40	.35	63,415.10	9,059.30
12.	Calves	61,339	.27	16,561.53	.22	13,494.58	3,066.95
13.	Hogs	1,071,772	.14	150,048.22	.12	128,612.76	21,435.46
14.	Sheep	238,711	.10	23,871.10	.08	19,096.88	4,774.22
15.	Horses & Mules	23	.40	9.20	.35	8.05	1.15
16.	Total Yardage Before Trader Yardage			$ 410,708.53		$ 335,604.74	$ 75,103.79
17.	Feed						
18.	Prairie Hay	42,349.78	Cwt. .654	$ 27,726.00	.60	$ 25,409.86	$ 2,316.14
19.	Alfalfa Hay	11,872.15	" .799	9,494.01	.60	7,123.29	2,370.72
20.	Corn	56,914.99	Bu. .564	32,142.55	.50	28,457.50	3,685.05
21.	Oats	1,285.08	" .267	343.64	.25	321.27	22.37
22.	Bedding	11,830	Bbls. .405	4,794.95	.40	4,732.00	62.95
23.	Milled Feeds	7,818.40	Cwt. .531	4,158.25	.80	6,254.72	2,096.47*
	Total Feed			$ 78,659.40		$ 72,298.64	$ 6,360.76
24.	Total Yardage & Feed Before Resale Yardage.			$ 489,367.93		$ 407,903.38	$ 81,464.55
25.	Resale Yardage						
26.	Cattle	18,869	.17½	$ 3,309.66	.17½	$ 3,309.66	$ .....
27.	Calves	1,188	.12½	149.43	.11	130.68	18.75
28.	Hogs	25,224	.06	1,513.44	.06	1,513.44	.....
29.	Sheep	470	.04	18.80	.04	18.80	.....
30.	Grand Total—			$ 494,359.26		$ 412,875.96	$ 81,483.30

*Indicates increase.

Mr. John J. Bachmann was an employee of the Secretary of Agriculture in charge of audits and accounts (R. 443). On behalf of the Government he offered in evidence a statement of appellant's income and expenses for rate making purposes for 1932, which appears at record 573 and has been printed at pp. 64-66 of the appendix to this brief. In that statement, Mr. Bachmann allowed and disallowed certain *income* and *expenses* for rate making purposes. The *expenses* allowed and disallowed by Mr. Bachmann were slightly changed in the decision of the Secretary. The Secretary's revision of Mr. Bachmann's allowance and disallowance of expenses for 1932 appears in paragraph 181 of the decision under the year 1932 in the third column of figures, headed "(3) Expenses Considered" (R. 120). In said third column, the Secretary made all adjustments considered necessary by him on account of expenses incurred in connection with the property determined by him to be not used and useful for stockyards purposes.

It is necessary in order to obtain certain figures not in the table in paragraph 181 of the decision (R. 120), to use certain figures taken from the compilation of Government auditor Bachmann appearing at record 573, 574, 575, appendix to brief pp. 64-66. Every statement made below may be verified from the tabulation in paragraph 181 of the decision or said compilation by Government auditor Bachmann. Under the item "(1) Expenses Per Books" in the tabulation in paragraph 181 of the decision, every figure for 1932 is exactly the same as that appearing in the audit of Government witness Bachmann (R. 574, 575, appendix to brief, pp. 65-66).

Total expenses, 1932. The following figures are taken from the table in paragraph 181 of the decision (R. 120) and the said compilation by Government auditor Bach-

mann (R. 574, 575, appendix to brief, pp. 65-66). The reference marks immediately after the description of the item, with the footnote, give a clear explanation of the source of each figure. They show the expenses for the year 1932 to be:

Expenses approved by Secretary (par. 181 of decision)	$289,539.33
Add thereto:	
Repairs, 1932, actual (1)	19,024.07
Taxes, 1932, actual (2)	43,475.84
Depreciation (3)	41,500.00
Cost of feed, 1932, actual (4)	85,433.60
Total operating expenses for rate making purposes, 1932, approved by Secretary	$478,972.84

(1) Government auditor Bachmann's audit (R. 574, 575, appendix to brief, pp. 65, 66) being the total repair items appearing in the statement of expenses opposite the word "Repairs", excepting the item of $796.72 for "Repairs—Outside Property".

(2) Seventh item in the first column of the tabulation in paragraph 181 of the decision (R. 120).

(3) Paragraph 173-177 of decision (R. 117, 118).

(4) Lines 29 to 33 inclusive of Government auditor Bachmann's audit (R. 574, appendix to brief, p. 65).

In the foregoing computation, all expenses have been modified in accordance with the adjustments made by the Secretary, except where the expenses for 1932 were less than the average allowances fixed by the Secretary. In such instances, we have taken the lower actual expenses instead of the average fixed by the Secretary, including a notable reduction in the item for repairs.

Income. The Secretary does not, in the decision, state appellant's income for any year. We therefore turn to Government witness Bachmann's audit, record 573, appendix to brief, p. 64. In the third column of the tabula-

tion on said page, appellant's total income for rate making purposes for 1932 is shown by Mr. Bachmann to have been $665,618.30. It will be noted, however, that Mr. Bachmann excluded two items which are "Feeding facility yardage" $3,320.75, and "Rental feeding facilities" $690.00. Since the feeding facilities have been included by the Secretary as used and useful, the sum of these two items, amounting to $4,010.75, should be added to the income stated by Government auditor Bachmann, and when that is done the total income for rate making purposes for 1932 becomes $669,629.05, instead of $665,618.30 stated in the Bachmann audit.

These adjustments having been made, we obtain the following result:

APPELLANT'S NET OPERATING INCOME, 1932.

1. Appellant's gross income for rate making purposes 1932	$669,629.05
2. Appellant's expenses for rate making purposes for 1932 as revised by Secretary	478,972.84
3. Appellant's net operating income for rate making purposes for 1932 as determined by Secretary (1 — 2)	$190,656.21
4. Fair return as determined by Secretary (dec., par. 171, R. 116)	$192,010.00
5. Amount by which appellant's income was less than the fair return determined by the Secretary at the time of hearing (4 — 3)	$ 1,353.79

The figures used up to this point were presented in detail in our briefs in the District Court. We do not understand that their accuracy was challenged by the Government.

If in the foregoing statement of expenses we had included the allowance made by the Secretary of $80,000 for depreciation and repairs, instead of only $60,524.07 for that purpose, the total reasonable expenses for 1932 would have been $498,448.77 and appellant's net income for rate mak-

ing purposes $171,180.28, or $20,829.72 less than the Secretary found to be reasonable.

CONFISCATORY RETURN IF PRESCRIBED RATES HAD BEEN IN EFFECT.

This is the result for 1932 under the rates charged by the stockyards and still in effect pending this appeal. *It is not the result which would have followed the much lower rates prescribed by the Secretary.* The reduced rates prescribed by the Secretary applied to appellant's business for 1932 would have diminished appellant's revenue from yardage and feed by $81,483.30, as shown in line 30 of the table on page 41 of this brief. We shall later show that certain credits claimed by the Government for resale yardage and feed lot yardage cannot be realized. If this reduction of $81,483.30 had been taken from appellant's net operating income of $190,656.21, in 1932 appellant's net operating income would have been only $109,172.91 or 3.9 per cent upon the fair value of $2,743,000, found by the Secretary in paragraph 161 of the decision (R. 112).

The situation here is on all fours with that condemned by this Court in *Board of Public Utility Comrs.* v. *New York Teleph. Co.*, 271 U. S. 23, 70 L. ed. 808. In condemning the order in that case, the Court said (p. 31):

> "The just compensation safeguarded to the utility by the 14th Amendment is a reasonable return on the value of the property used *at the time that it is being used for the public service.* And rates not sufficient to yield that return are confiscatory." (Emphasis ours.)

We have here an exactly similar situation.

We repeat that in making this computation we have used not disputed amounts, but have adopted the value, rate of return, operating expenses, *depreciation allowance,* etc., prescribed by the Secretary.

SECRETARY LACKED JURISDICTION TO MAKE ORDER.

For the reasons just stated, it is respectfully submitted that the Secretary had no jurisdiction to make an order reducing appellant's rates, because on the Government's own evidence, the statutory prequisite was lacking in that the rates were not unreasonable at the time of the hearing. Not only are there no *findings* of the Secretary to support a *conclusion* that the rates were unreasonable at the time of the hearing; but the conclusion to that effect stated by the Secretary is contrary to the *indisputable character of his own evidence.* Consequently the order is void under the construction placed by this Court upon the applicable statutes (pp. 24, 25 this brief).

As demonstrated solely by the Government's own evidence, (1) appellant's rates and charges were not unreasonable at the time of the hearing; (2) there was no evidence to support such a finding; (3) no such finding was made; (4) the prescribed rates would have been confiscatory; and consequently the order is void.

V.

THE DISTRICT COURT ERRED IN FAILING TO FIND THAT THE RATES PRESCRIBED BY THE SECRETARY WOULD NOT HAVE PRODUCED A FAIR OR NON-CONFISCATORY RETURN UPON THE FAIR VALUE OF APPELLANT'S PROPERTY USED AND USEFUL FOR STOCKYARDS PURPOSES DURING THE PERIOD OF SIX YEARS PRIOR TO THE HEARING CONSIDERED BY THE SECRETARY IN HIS DECISION.

We have proved that appellant's rates and charges were not unreasonable *at the time of the hearing,* using only the Secretary's conclusions as to values and permissible expenses. We shall now demonstrate that the rates were not unreasonable at any time during the six years considered by the Secretary in his decision. This is no. 12 of

our points to be relied upon, assignments of error nos. 53, 54, 55, 56, 58, 61, 63, 64, 66, 67, 68, and 71.

Comparisons of rate reductions under first and present decisions. A comparison of the first and present decisions of the Secretary reveals that the same so-called spread or gross margin for each class of feed and bedding was prescribed. The present decision, like the first decision, made no change in the charges for certain miscellaneous services, such as loading and unloading railroad cars, Exchange Building rentals, vaccinating and spraying hogs, cleaning and disinfecting pens, dipping, etc. (see pars. 38-40, present decision, R. 43, 44, 45; and first decision, pp. 61, 62 of appendix to this brief). The substantial reductions ordered in both decisions were in the yardage rates. Although the yardage rates prescribed in the first decision and in the present decision were not the same, they produce substantially the same gross yardage income when applied to the receipts estimated by the Secretary in the present decision (Par. 201, R. 126). For example, the total receipts from yardage under the first decision would have been $403,662.50 and under the present decision they would have been $412,775, as applied to said estimated receipts. The conclusion therefore follows that the reductions prescribed by the Secretary in the present decision are substantially the equivalent of those prescribed in the first decision.

Propriety of use of first decision as basis for value 1927-1931. Two valuations have been made by the Secretary of appellant's property used and useful for stockyards purposes in this investigation. The first valuation was determined in the Secretary's decision of July 20, 1931, and the second in the present decision by the Secretary of May 4, 1934. Because of the important bearing of the first decision upon the question whether appellant's rates and

charges were unreasonable at any time prior to 1932, we have printed the first decision in full in the appendix to the brief and shall refer to it to verify any statements of fact taken from it in this portion of the argument.

In dealing with the period prior to 1932, and in comparing net operating income with value for that period, we certainly have a right to treat this first decision and the finding of value of the Secretary therein as the *minimum* value upon which to base a computation for the period prior to 1932, for at least the following reasons:

(a) This valuation was made by the Secretary on July 20, 1931, and was adopted by him as a basis for reducing appellant's rates.

(b) This valuation in the first decision was before a three-judge District Court in *St. Joseph Stock Yards Co. v. United States,* 58 F. (2d) 290. By reference to the footnote appearing on page 295 of said decision, it will be observed that a majority of the court were of opinion that an inadequate value had been placed upon appellant's property and insufficient allowances made for certain major expenses. We quote the relevant portion of that footnote:

> "As to the principal matters in controversy between the parties in connection with the valuation of the petitioner's property, to wit, the value of the lands of petitioner upon which its business chiefly is conducted and the element of going concern value, a majority of the court is of the opinion that the values found by the Secretary are against the weight of the competent evidence. A minority of the court believes that the values as found by the Secretary in these respects are supported by substantial evidence and should be sustained. A majority of the court also is of the opinion that, in determining the net income of the petitioner, the Secretary made an allowance for repairs, maintenance, and depreciation, which was upon the weight of the evidence too small. A minority of the court thinks that the findings of the Secretary in these respects were

supported by substantial evidence, and that his findings should be sustained. A majority of the court is of the opinion that, by reason of insufficient valuation as to properties which were included and of insufficient allowances for maintenance, repairs, and depreciation, the order of the Secretary has been shown to be confiscatory, even without regard to changed conditions. A minority of the court is of the opinion that, if changed conditions be disregarded and the order considered only upon the record made before the Secretary, it should be sustained."

In connection with that decision, the court made certain findings of fact which are included in respondent's (appellant's) exhibit 103 in the present proceeding (one of the original exhibits certified to this court). The court there found that appellant not only would have had no excess earnings for 1930 and for the first six months of 1931 under the rates prescribed by the Secretary in the first decision, but that the rates there prescribed, which were substantially the same as the present rates in their result as to revenue, would have produced a return of only 4.47 per cent for 1930 and less than that amount for 1931 upon the inadequate value determined by the Secretary.

So much is *res adjudicata*. It might well be contended that this decision and finding of the District Court, which was not appealed by the Secretary, is conclusive upon the proposition that appellant's rates and charges were not unreasonable during the period 1930 and 1931. Thus, inasmuch as the rates at present prescribed are substantially the same as those prescribed in the first decision when appellant's income was higher, and since it has been shown that the prescribed rates would have produced a confiscatory return in 1932, and we have a judicial finding to that effect for 1930-1931, it is definitely established that for at least three years (1930-1932) of the six years (1927-1932) considered by the

Secretary in the present decision, appellant's rates could not have been unreasonable. But we do not limit ourselves to reliance upon this finding.

Analysis of value, 1927-1931. For the purpose of demonstrating that the indisputable facts will not support a finding that appellant's rates were unreasonable prior to 1932, *we adopt the findings of the Secretary as to total value of appellant's property as determined in the first decision,* except as to certain comparatively small areas on which a value was not determined by the Secretary in the first decision, where we have used the land value fixed by the Secretary's land appraiser on the first hearing. In the present decision the Secretary included areas of land used and useful for stockyards purposes which were 34.01 acres in excess of the area included in the first decision. This addition, with negligible exceptions, is composed of "feed lots".

In the present decision these "feed lots" are included as used and useful in accordance with appellant's contention throughout this investigation, including the first hearing. The evidence shows that the use of the feed lots at the time of the first decision and prior thereto was the same as at the time of the present decision. The Secretary in effect so finds in paragraph 58 (R. 57) of the present decision, where it is stated:

> "These feedlots are allocated to different persons who use them for the holding, handling and feeding of cattle, hogs and sheep. * * * The allocations have, since the year 1929, remained fairly static."

We have applied to this additional area the unit land values fixed by the Secretary in the first decision in zones A, C, N and 1 (pars. 73, 74, 75, 76, first decision, appendix to brief, pp. 38 and 39); by W. L. Mack, Government land appraiser, first hearing, in zones B and E (R. 185) and zones 2 and 3 (R. 185).

We thus determine that the total value of appellant's property as per the Secretary's determination and evidence, 1927-1931, is as follows:

Total value (first decision, par. 97, appendix to brief, p. 50)	$3,382,148.00
Value of additional land found to be used and useful	329,163.28
Total value, 1927-1931	$3,711,311.28

ANALYSIS OF OPERATING REVENUE, EXPENSES, AND NET OPERATING INCOME FOR RATE MAKING PURPOSES, 1927-1931, DEMONSTRATES THAT THE PRESCRIBED RATES WOULD HAVE BEEN CONFISCATORY DURING THE SIX YEAR PERIOD.

Income for rate making purposes. To summarize this analysis we have prepared a computation, printed at page 55 herein, entitled "Appellant's net operating income, 1927-1931, for rate making purposes." No such analysis as this is made in the decision of the Secretary; in other words, it is another instance in which the Secretary's decision *lacks the requisite findings*. While this same analysis was submitted to the District Court, it is not mentioned in the decision of that court nor is any finding made in connection therewith.

One point it is desired to emphasize in connection with this computation is that every figure in it is taken from the decision of the Secretary (such as the prescribed rates mathematically applied to past business) or from the Government audit of appellant's books for the years 1927-1931, or from the first decision of the Secretary. Inasmuch as this is considered by appellant an important point in this case, the method followed in the computation given below will be explained in necessary detail.

As found by the Secretary in his decision, appellant's income for rate making purposes consists of the gross amounts received for yardage, gross profit on feed, gross

amount received for loading and unloading railroad cars, the gross amount from feed lot yardage, and gross amount from miscellaneous stockyards operations. Appellant had in the past and still has certain income not arising from stockyards operations as, for instance, during 1927 and 1928 it owned a terminal railroad. The profits of that railroad were available for distribution as profits of the stockyards company and at the sale of the railroad the gross amount realized was distributed as a special dividend to the stockholders. Appellant also has certain income from outside properties, such as rental from real estate, buildings, etc., which are not included within its income for rate making purposes and which are excluded by the Secretary as not used or useful for stockyards purposes, and as to which no error is assigned as to the exclusion.

In the computation printed below at page 55, the first item "Yardage received" is stated exactly as it appears in the Government audit, page 3, Government exhibit 121-A (one of the original exhibits certified to this court).

The second item "Feed sales less cost" is taken from the same exhibit and consists merely of subtracting the cost of feed purchased from the amount for which the feed was sold. The gross amounts for which the feed was sold are shown for the several years in lines 2, 3, 4, 5, and 6, page 3, Government exhibit 121-A, and the cost of the feed purchased is shown in items 67, 68, 69, 70, 71, and 72 of page 4, Government exhibit 121-A.

The third item "Loading and unloading cars" represents the exact amounts received, as shown by the Government audit. These amounts are also shown in paragraph 38 (R. 43) of the decision of the Secretary.

The fourth item "Feed lot operations" represents the revenue from that source, as set forth on page 3, Government exhibit 121-A, in lines 27 and 28.

The fifth item "Miscellaneous stockyards operations" is taken from the tabulation appearing on page 3, Government exhibit 121-A, and covers the items shown in lines 7, 10 to 26, inc., 34, 35 and 38.

The items excluded from income are only those for "outside operations" which were excluded by Government witness John J. Bachmann (R. 573) with this exception: we have included one item of income which Mr. Bachmann excluded, namely, that of "feeding facility yardage", because the Secretary has included the feed lots as used and useful.

Expenses for rate making purposes. We now come to the expenses to be deducted from the income for each year. We explain exactly how the total expenses of $463,429.23 for 1931 are computed. We start with the tabulation appearing in paragraph 181 of the Secretary's present decision (R. 120) and find that the expenses which the Secretary included in said tabulation for 1931 amount to $303,765.72. This did not include taxes or depreciation and repairs, because the Secretary made specific allowances for these items in addition to the expenses considered in paragraph 181 of the decision.

For taxes, we have taken for each year the amount actually paid, as appearing opposite the item "taxes" in the tabulation in paragraph 181 of the decision, which for the year 1931 amounted to $57,663.51.

It should be remembered that we are here dealing with the period prior to the decision of May 4, 1934; that we are using the higher values fixed by the Secretary in his first decision of July 20, 1931; and that we therefore properly use the somewhat higher expenses allowed by the Secretary in the first decision, those expenses having unquestionably been necessary during the period covered by the first decision. In the first decision of July 20, 1931, in

paragraphs 105-110, appendix to brief pp. 53-55, the Secretary held that the allowance for repairs, maintenance, replacements, and a reserve for depreciation should be $102,000 per year. We therefore adopt this figure, merely calling attention to the fact that in *St. Joseph Stock Yards Co.* v. *United States,* 58 F. (2d) 290 (footnote, page 295) a majority of the court expressed the opinion that this allowance was inadequate. The three items so described, added together, are as follows:

Expenses (decision, par. 181)	$303,765.72
Taxes	57,663.51
Repairs and depreciation	102,000.00
Total expenses, 1931	$463,429.23

The expenses so determined are then subtracted from the gross income for the year 1931, and it appears that appellant's net operating income for rate making purposes was $223,461.37.

The next computation is to determine how much less that income would have been had the rates prescribed by the Secretary then been in effect. The number of head of live stock yarded, feed sold, etc., are all taken from the Government audit, Government exhibit 121-A. The method followed is exactly similar to the computation appearing on page 41 of this brief. It is merely the mathematical application of the rates prescribed by the Secretary to the live stock yarded and the feed sold within each year, 1927-1931, inclusive.

For each year other than 1931, the income, expenses, and the amount which would have remained had the rates prescribed by the Secretary been in effect are determined in exactly the same manner.

The computation which has just been described is as follows:

Appellant's Net Operating Income, 1927-1931, For Rate Making Purposes.

	1931	1930	1929	1928	1927
Yardage Received (1)	463,326.00	497,131.60	520,086.96	519,677.25	482,735.60
Feed Sales Less Cost (2)	125,095.75	149,994.19	166,989.45	176,320.34	155,513.18
Loading and Unloading Cars (3)	28,422.00	38,091.00	46,179.00	52,011.00	50,031.00
Feed Lot Operations (4)	8,165.82	4,406.73	2,424.00	2,400.00	1,880.00
Miscellaneous Stock Yards Operations (5)	61,881.03	60,431.46	68,651.08	66,793.10	66,641.71
	686,890.60	750,054.98	804,330.49	817,201.69	756,801.49
Less Expenses Allowed (6)	463,429.23	471,025.26	490,203.10	477,934.58	480,149.54
	223,461.37	279,029.72	314,127.39	339,267.11	276,651.95
Less Reduction if Rates Prescribed by Secretary of Agriculture had been in effect	71,882.45	126,158.64	138,870.84	153,989.53	140,474.71
Net Operating Income for rate making purposes under prescribed rate	151,578.92	152,871.08	175,256.55	185,277.58	136,177.24

(1) Page 3, Government exhibit 121-A

(2) Gross Feed Sales shown on Page 3 Government exhibit 121-A and Cost of Feed shown on Page 4 Government exhibit 121-A

(3) Page 3 Government exhibit 121-A

(4) Page 3 Government exhibit 121-A

(5) Page 3 Government exhibit 121-A

(6) Column 3, page 121, exhibit A to petition, plus taxes actually paid as shown in columns 1 and 2 plus depreciation and repairs allowed by Secretary in 1st decision, paragraph 110.

Foregoing computation not affected by amounts actually set aside on appellant's books for depreciation reserve. On the trial below, it was contended by the Government, at page 214 of the Government brief, "that unless the Secretary's findings with respect to the annual allowance for depreciation are incorrect, no confiscation can be demonstrated." We call attention to the fact that in this tabulation we have adhered solely to the income and expenses shown in the Government audit, and for the item of *maintenance, repairs, and depreciation we have not used the figure deemed by appellant to be proper or that set up on its books, but the item of $102,000 allowed in the Secretary's first decision.* If we had used the lesser amount of $80,000 allowed in the present deci-

sion, the net operating income would have been increased by $22,000 and would have been only $173,578.92, or $18,431.08 less than the reasonable return of $192,010 found by the Secretary to be proper in 1934.

Net operating income in 1931. It should be recalled, however, that in 1931 the Secretary held (first decision, par. 119, appendix to brief, p. 59) that under conditions then existing appellant should receive an annual net operating income of $253,661. The net operating income for rate making purposes under the *prescribed* rates in 1931 would have been $151,578 or $102,083 less than the reasonable return determined by the Secretary for that year. The amount of net operating income applied to the value of the property clearly supports the finding of the District Court in *St. Joseph Stock Yards Co.* v. *United States,* 58 F. (2d) 290, at page 296, to the effect that, if the rates prescribed by the Secretary had been in effect, appellant's net operating income in 1930 would not have been more than $151,197, or not more than 4.47 per cent. To be exact, the net operating income of $152,871 for 1930, had the Secretary's prescribed rates been in effect, would have amounted to approximately 4.1 per cent on the value of the property. Under that finding, the Secretary's rates would have produced a confiscatory return in 1930 and in 1931.

We have definitely established (this brief, p. 45) that confiscation would have been the result in 1932. In the present decision of the District Court, 11 F. Supp. 322, at page 336, it is remarked by the District Court that "conditions were abnormal in 1933 and yet are so." It is a strange doctrine under which, over such a period of years, it could be demonstrated that the prescribed rates *would have been* and *are* confiscatory, and yet that they must be established merely upon hope of an improvement in appel-

lant's total business operations and net operating income for rate making purposes.

In view of the position taken by the Government and the District Court, it is desired also to call attention to certain other facts in connection with this computation of value and income. In the District Court, while the Government in substance admitted that the rates prescribed by the Secretary would not have been reasonable at the time of the hearing (1932), it was argued that in prior years appellant had had excess income which could be applied to a reduction in rates for the future. Such a contention was presented at page 212 of the Government's brief in the District Court. Even if this were true, no such appropriation of past earnings could be made. *Board of Public Utility Comrs.* v. *New York Teleph. Co.*, 271 U. S. 23, 70 L. ed. 808, pages 31 and 32. Not only is that contention disproved by the facts, but, as we shall now demonstrate, such a contention cannot be sustained even by including the entire period 1927-1931.

The fair return determined by the Secretary in the present decision of 7 per cent would amount on the above total of values of $3,711,311 to $259,791 per year. In the first decision (par. 100, appendix to brief, p. 51) the Secretary determined that under conditions then existing a fair return would be 7.5 per cent. This would produce an average fair return of $278,348. Appellant's net operating income for rate making purposes for the years 1927-1931, inclusive, as shown in the table on page 55, under its *existing rates,* was an average of $286,507 or only $8,159 per year in excess of the amount which the Secretary's first decision intended to produce as a fair return for that period. This amount is 7.7 per cent of the value of the used and useful property as determined in the second decision but with values which are those determined

by the Secretary in his first decision, except for a few minor tracts of land where we use the values determined by the Secretary's land appraiser.

Prescribed rates would have been confiscatory during entire period considered by Secretary. In the table on page 55, we have set forth appellant's net operating income for rate making purposes for the years 1927-1931, inclusive, both under the existing rates voluntarily established by appellant and under the rates which are *prescribed* by the Secretary in the present decision. As there shown, the *prescribed* rates would have produced an average income over said five years of only $160,232.27, which is but 4.3 per cent of $3,711,311. This return is substantially lower than that sustained by any court, or by this Court, as non-confiscatory, in any of the decisions cited by the Government in its brief in the District Court. Such a return is clearly confiscatory. It was so held in the former trial of this case in *St. Joseph Stock Yards Co.* v. *United States,* 58 F. (2d) 290, where the court held (page 296) that a net return upon appellant's used and useful property of not more than 4.47 per cent was confiscatory.

In *Denver* v. *Denver Union Water Co.,* 246 U. S. 178, 62 L. ed. 649, at page 194, it was held that a net return of 4.28 per cent was confiscatory.

In one of the very recent decisions of this Court, *West Ohio Gas Co.* v. *Public Utilities Com.,* 294 U. S. 79, 81, 79 L. ed. 773, this Court held a return of only 4.92 per cent to be confiscatory.

The rates prescribed by the Secretary would have brought the rate of return for the period 1927-1931, inclusive, or 1927-1932, inclusive, below any level sustained by this court as non-confiscatory.

Facts just stated dispose of Government's contention as to excessive amount of depreciation reserve. As we have stated at a former point, the Government contended in the District Court (Government's brief in District Court, page 214) "that unless the Secretary's findings with respect to the annual allowance for depreciation are incorrect, no confiscation can be demonstrated." The summary just made disposes of this contention. For the year 1932, which was the last year covered by the Secretary's present decision, *we use only $41,500 for a depreciation reserve, and for repairs, not $38,500, but the actual amount shown in paragraph 181 of the Secretary's decision, which is $19,024.07.* For the years 1927-1931, covered by the first decision, *we have used only the allowance for repairs, maintenance, and depreciation of $102,000, fixed by the Secretary in the first decision, instead of the higher amount actually written off by appellant.* Consequently, it cannot truthfully be contended that any excess of past earnings or of present earnings may be taken from appellant because of the setting up of an excessive depreciation reserve, for the reason that in these computations we have used only the allowances for depreciation reserve, or depreciation reserve and repairs, made by the Secretary in said two decisions.

The principle adopted by the court in *Lindheimer* v. *Illinois Bell Teleph. Co.*, 292 U. S. 151, 78 L. ed. 1182, has no application here because the confiscatory character of the rates has been demonstrated, *not by the use of the depreciation reserve set up by appellant but by the use of that determined to be proper by the Secretary.*

The Secretary states in paragraph 168 (R. 115) of his decision that the rates prescribed are based upon detailed studies of the financial operations of the business of the appellant during this six-year period. *The Secretary makes no findings to sustain that conclusion.* We have here presented, from the Secretary's own evidence only, the findings

which should have been made either by the Secretary or the District Court. Clearly they show that the Secretary was without authority to make the order because (1) the rates were not unreasonable at the time of the hearing; and (2) the prescribed rates would have produced a return below the level of confiscation during the entire period upon which the Secretary states that he bases his order.

VI.

THE SPECIFIC REDUCTIONS IN THE RATES AND CHARGES PRESCRIBED BY THE SECRETARY ARE ARBITRARY, BASED UPON NO FINDINGS IN THE DECISION, NOT SUPPORTED BY ANY EVIDENCE OF RECORD, AND ARE THEREFORE VOID.

It was alleged in the petition of appellant in the District Court, part IX, paragraph (N), that the rates and charges prescribed by the Secretary were made without having as a basis any evidence showing, or tending to show, the cost of any service for which the charge is prescribed, or showing, or tending to show, what reduction, if any, might be justified in any specific charge, and without any evidence showing, or tending to show, the relation of the cost of one service to another. The answer of the Government to this allegation (R. 137) appears in substance to be an admission of its accuracy. The defect in this respect is the subject of appellant's assignment of error no. 72 and point no. 19 of appellant's statement of points to be relied upon.

Although this point was presented and argued to the District Court in substantially the same manner in which it is presented here, *the validity of the order or lack thereof upon the grounds stated is not mentioned in the decision of the District Court.* The District Court passed this point without comment.

No attempt was made in the evidence or decision of the Secretary to determine the cost or profit in

connection with any specific stockyards service performed by appellant. No facts or findings are stated as to costs of individual services, nor is any reason stated in the decision for the tremendous variations indicated below in the reductions prescribed by the Secretary in yardage charges, as, for example, a reduction of 8 cents in the yardage charge on cattle received by rail, a reduction of 4 cents in the yardage charge on hogs received by rail, and a reduction of only 2 cents in the yardage charge on sheep received by rail. The apparent theory of the decision is that, having reached the conclusion (*but without findings or evidence to support it*) that appellant's net operating income could be reduced by a certain number of dollars per year, the Secretary decided that he might distribute that reduction to the various services in any manner he deemed proper. That the Secretary was considering merely the total revenue and not the costs of individual services is definitely established by the following quotation from paragraph 40 of his decision (R. 45), reading as follows:

> "A test of the reasonableness of the rates now being charged by respondent is whether the revenue produced by them is substantially in excess of the amount necessary to pay the reasonable cost of rendering the services for which those rates are charged, including in such costs a fair return upon the fair value of respondent's property used and useful in the rendition of such services."

Examination of the entire decision will show that the Secretary made no *specific finding* that the total net operating income received by appellant is in excess of the amount necessary to produce a fair return upon the value of the used and useful property. Based upon prophecies, forecasts, and hypotheses, the decision comes to the conclusion that, if appellant obtains certain receipts, sells certain amounts of feed, and receives certain miscellaneous income, such as rents, certain rates will be sufficiently high; but it is

perfectly apparent that, even though all *specific findings* have been omitted, the only effort made by the Secretary has been to make an estimate that appellant's income, as a total, will be equal to the minimum non-confiscatory return.

That no effort was made to determine the cost of performing any *specific* service, or the extent to which any *specific* charge might properly be reduced, having in mind the elements of cost entering into the service, is undisputed; and is definitely established by the testimony of the Government witness Bachmann under whose direction all the accounting evidence offered by the Government was prepared. The following are excerpts from Mr. Bachmann's testimony:

> "It would require, however, some study and time to determine a basis for the distribution or allocation of all of the various classes of expenses that would come under the heading of overhead to allocate them to the particular service or function. It would require a considerable length of time and study. * * * I shall search the work sheets to determine if they show the number of labor hours which have been used in the performance of railroad loading and unloading and state on the record which of the documents so show. If nothing more is heard from me on the subject, it is proper to assume that the documents do not so show." (R. 463, 464.)

Nothing more was heard from Mr. Bachmann on this subject, as the record will show.

> "Repairs to these particular railroad loading and unloading facilities have not been segregated in my audit. This is also true of electric lighting expense." (R. 464.)

> "I know of no method by which, from facts already in the record, labor costs could be distributed. * * * I have given it no study and those are offhand opinions and are the only ones where offhand a basis comes to my mind readily. * * * It would be quite a lengthy job for me to make a study and investigation to enable me to distribute all the costs among the various func-

tional activities in the respondent stockyards in a manner satisfactory to myself. It would require months." (R. 470.)

"The gross income distribution method does not give a correct result except when the cost of operating a function or department is in the same relationship with the gross income, and the mark up on the commodity sold or on the commodity offered for sale is in the same percentage." (R. 471.)

"If I wanted to find the profit made on feed on the one hand and yardage on the other, I would not attempt to do it on the basis of gross income from each. As to repairs, I am inclined to think I would use value or area. * * * *I have not done this in my audit.* I have not attempted to allocate the repairs to each type of property except to the extent that I did segregate the expenses of the Transit House so far as I was able to do so." (R. 472.) (Emphasis ours.)

The rule stated in the Omaha Stock Yards case is erroneous. Substantially this same point was before a three-judge District Court in *Union Stock Yards Co. of Omaha* v. *United States,* 9 F. Supp. 864, where it is discussed at pages 878 and 879. The court sustained the action taken by the Secretary although the Secretary's answer admitted that there was no evidence as to the value of the particular services to the user, of the relation of one service to another, or of one rate to another, stating:

"the sole test of its validity in this court being whether or not confiscation is proven."

It is respectfully submitted that the decision in the *Omaha case* does not conform to the rules laid down by this Court as to the jurisdictional basis upon which an order may be made by the Interstate Commerce Commission or the Secretary of Agriculture.

At least as applied to federal agencies, this Court requires substantial compliance with the terms of the statute. It is not sufficient to sustain an order merely to say

it does not constitute confiscation. This exact point was before the court in *St. Louis & O'Fallon R. Co.* v. *United States,* 279 U. S. 461, 73 L. ed. 798. We quote the following from pages 487 and 488 of that decision:

> "It was deemed unnecessary by the Court below to determine whether the Commission obeyed the statutory direction touching valuations since the order permitted the O'Fallon to retain an income *great enough to negative any suggestion of actual confiscation.* With this we cannot agree. Whether the Commission acted as directed by Congress was the fundamental question presented. If it did not, the action taken, being beyond the authority granted, was invalid." (Emphasis ours.)

In the petition in this case (R. 1), it was alleged, with respect to the individual and varying charges prescribed by the Secretary, that they were:

1. Unsupported by the evidence of record in said hearing; 2. contrary to the evidence of record; 3. contrary to the weight of the evidence; 4. arbitrary; 5. confiscatory.

These allegations set up two distinct violations of appellant's statutory and constitutional rights against which this Court will afford relief if the allegations are sustained. If appellant is correct with respect to allegations 1-4, it is entitled to have the order permanently enjoined, even though it may not result in confiscation of appellant's property. The Secretary may not prescribe rates on the basis of mere caprice, even if the prescribed rates fall short of confiscation.

THE INEPT CHANGES PRESCRIBED IN APPELLANT'S RATES.

The following tabulations show under the word "present" the yardage rates now in effect, pending this appeal; under the word "prescribed" the yardage rates prescribed by the Secretary for the future; and under the word "reduction" the amount of reduction in cents per head and in per cent.

		Present	Prescribed	Reduction
Cattle	Rail	35¢	27¢	8¢—23 per cent
	Truck	40¢	35¢	5¢—12.5 " "
Calves	Rail	25¢	17¢	8¢—32 " "
	Truck	27¢	22¢	5¢—18.5 " "
Hogs	Rail	12¢	8¢	4¢—33 " "
	Truck	14¢	12¢	2¢—14 " "
Sheep	Rail	8¢	6¢	2¢—25 " "
	Truck	10¢	8¢	2¢—20 " "

In the first decision the reductions made by the Secretary, with the percentages thereof, were as follows:

		Present	Prescribed	Reduction
Cattle	Rail	35¢	28¢	7¢—20 per cent
	Truck	40¢	33¢	7¢—17.5 per cent
Calves	Rail	25¢	18¢	7¢—28 per cent
	Truck	27¢	21¢	6¢—22 per cent
Hogs	Rail	12¢	10¢	2¢—16 per cent
	Truck	14¢	12¢	2¢—14 per cent
Sheep	Rail	8¢	7¢	1¢—12.5 per cent
	Truck	10¢	9¢	1¢—10 per cent

As to feed spreads, appellant's feed spread or margin on hay in 1982 was 67.4 cents per cwt., and on corn 56.4 cents per cwt. See table, p. 41. The Secretary has prescribed a spread of 60 cents on hay and 50 cents on corn, being a reduction of 7.4 cents on hay and 6.4 cents on corn, amounting to 10.9 per cent for hay and 11.3 per cent for corn.

On the other hand, many of the charges made by appellant's tariff are unchanged by the Secretary's order, whereas a proportionate reduction in all charges would have indicated a reduction in the charge for other services as well as for yardage and feed. We list below the services for which the order prescribes exactly the same charge now contained in appellant's tariff.

DIPPING & SPRAYING.

	Present	Prescribed	
Cattle	35¢ per head	35¢ per head	no change
Calves	15¢ " "	15¢ " "	" "
Hogs	5¢ " "	5¢ " "	" "
Sheep or Goats	5¢ " "	5¢ " "	" "

HOG IMMUNIZING

	Present	Prescribed	
	10¢ per head	10¢ per head	no change

CATTLE TESTING BARN.

	Present	Prescribed	
	$1.00 per head	$1.00 per head	no change

CLEANING & DISFECTING.

	Present	Prescribed	
Single pens	$2.50	$2.50	no change
Double pens	4.00	4.00	" "
Chutes	2.50	2.50	" "
Alleys	.37 per 100 sq. ft.	.37 per 100 sq. ft	" "
Wagons & small trucks	.75 each	.75 each	" "
Trucks—2 tons and over	1.00 "	1.00 "	" "

BEDDED & SHELTER PENS.

	Present	Prescribed	
Bedded pens for hogs	$1.00 per car per night	$1.00 per car per night	no change
Bedded pens for hogs	.50 per ½ car-load per night	.50 per ½ car-load per night	no change
Bedded pens for hogs truck division	.15 per pen per night	.15 per pen per night	no change
Shelter pens for cattle	.10 per head each 24 hours	.10 per head each 24 hours	" "
Shelter pens for calves	.05 per head each 24 hours	.05 per head each 24 hours	" "
	$2.00 minimum each pen	2.00 minimum each pen	" "

SPECIAL SALE BARN.

	Present	Prescribed	
Cattle	$ .35 per head yardage	$ .35 per head yardage	no change
Cattle	1.00 " " stall	1.00 " " stall	" "
Cattle	1.00 " " ring free	1.00 " " ring free	" "
Hogs	.12 " " yardage	.12 " " yardage	" "
Hogs	.35 per pen per day	.35 per pen per day	" "
Hogs	.50 per head ring free	.50 per head ring free	" "

WEIGHING THROUGH SHIPMENTS OF LIVE STOCK.

	Present	Prescribed	
	$2.00 per car	$2.00 per car	no change

The Secretary also authorized an increase, which will be discussed at another point, in the charges made for live stock held in the feed lots. The increase authorized, with the resulting percentage change in rates, is indicated in the following tabulation:

AUTHORIZED INCREASE IN CHARGES.

	Present	Prescribed	Increase
Cattle—Feedlot.....	35¢	60¢	25¢— 71 per cent
Hogs "	5¢	38¢	33¢—660 " "
Sheep "	5¢	38¢	33¢—660 " "

The Secretary reduced the yardage charge on rail shipments of cattle.....8 cents.

The Secretary reduced the yardage charge on truck shipments of cattle.....5 cents.

Thus making the difference between the rail and truck yardage charge on the larger species.....8 cents per head.

The Secretary reduced the yardage on rail shipments of hogs .....4 cents
on truck shipments of hogs.....2 cents
and on rail shipments of sheep.....2 cents
and on truck shipments of sheep.....2 cents.

This brings it about that, if the prescribed rates are approved, the yardage charge on rail receipts of hogs will be 4 cents per head less than on truck receipts, and on rail shipments of sheep 2 cents less than upon truck receipts. We challenge counsel for the Government to point to a scintilla of evidence which will justify a greater reduction in yardage for rail than for truck shipments.

These reductions on each of the species have the following range in percentages, being listed below from the lowest percentage reduction, in order, to the highest:

Truck—	Cattle	12.5	per cent
"	Hogs	14	" "
"	Calves	18.5	" "
"	Sheep	20	" "
Rail —	Cattle	23	" "
"	Sheep	25	" "
"	Calves	32	" "
"	Hogs	33	" "

These reductions bear no relationship to any evidence of record nor could any findings have been made upon the evidence which would have justified the prescription of the specific rates named in the order.

If it could have been found that the totality of appellant's net operating income was unreasonable at the time of the hearing, the only order which could have been justified would have been a proportionate percentage reduction in all of appellant's charges. It will be noted, however, that the reductions in yardage made by the Secretary range from 12.5 per cent to 33 per cent; the reductions in feed charges from 10.9 per cent to 11.3 per cent; and the increases authorized in feed lot charges from 71 per cent to 660 per cent.

The decision of the Secretary indicates (par. 195, R. 123) that in 1932 there were received at appellant's stockyards 1,148,990 hogs. Assuming that the Secretary intended to make a reduction in appellant's revenue of approximately $81,000 (as indicated by the application of his rates to appellant's 1932 business), it is obvious that that purpose could have been accomplished just as effectively by reducing the yardage rates on hogs 7 cents per head and making no reduction in other yardage rates or feed profit. Such action would have found equal support in the record and findings.

It is respectfully submitted that, under the decisions of this court, and in the light of the evidence of record, appellant is entitled to have the order declared void because it is (1) arbitrary in the legal sense; (2) unsupported by any findings; and (3) unsupported by any evidence.

VII.

THE DECISION OF THE SECRETARY WAS ERRONEOUSLY PREDICATED UPON SPECULATION AND PROPHECY AS TO INCREASED REVENUE WHICH WOULD BE OBTAINED BY APPELLANT.

This point is no. 10 of our points to be relied upon, and is covered by assignments of error nos. 53, 57, 60, 65 and 69. This court declared, at the last term, that "prophecy, however honest, is generally a poor substitute for experience". *West Ohio Gas Co.* v. *Public Utilities Com.*, 294 U. S. 79, 82, 79 L. ed. 773, 776.

We deem it proper to indicate the extent to which the order is based upon prophecy and speculation concerning increased revenue which may accrue to appellant from increased receipts of live stock, in contrast with the actual receipts of live stock and the revenue accruing therefrom at the time of the hearing.

The amount of revenue which should be received by appellant from its various stockyards operations (principally yardage and feed) is stated in various paragraphs of the Secretary's decision. The receipts of live stock for a period of six years ending with 1932 are stated in paragraph 195 of the decision (R. 123). The receipts estimated by the Secretary for the future as a basis for the rates prescribed by him are stated in paragraph 201 of the decision (R. 126). The total revenue anticipated by the Secretary from the various charges prescribed by him is stated in paragraph 208 of his decision. (R. 129).

The whole order is based upon a series of assumptions, speculations, and prophecies which may be summarized as follows:

if appellant obtains the receipts estimated in paragraph 201 of the decision (R. 126);

if appellant sells the amount of feed estimated in paragraph 204 of the decision (R. 127);

if appellant receives the income from miscellaneous operations estimated in paragraph 208 of the decision (R. 129);

if appellant receives the loading and unloading revenue estimated in paragraph 208 of the decision (R. 129);

if appellant's expenses for repairs and depreciation are as estimated in paragraph 177 of the decision (R. 118);

if appellant's taxes are as estimated in paragraph 180 of the decision (R. 119);

if appellant's other expenses are as estimated in paragraph 193a of the decision (R. 123);

then appellant will receive a net operating income of $192,010 per annum under the prescribed rates.

The tables given below are merely mathematical applications of the rates prescribed by the Secretary (decision, par. 207, R. 128) to his estimated receipts of live stock, as well as the revenue to be received from feed lot yardage, resale yardage, miscellaneous charges, etc., *compared with the actual result of applying the charges prescribed by the Secretary to each class of business done by appellant in 1932.*

YARDAGE REVENUE ESTIMATED BY SECRETARY.

(See par. 201 of Secretary's decision (R. 126) and multiply estimated receipts by prescribed rates.)

Cattle—truck	260,000 @ 35¢	$ 91,000
rail	140,000 " 27¢	37,800
Calves—truck	70,000 " 22¢	15,400
rail	15,000 " 17¢	2,550
Hogs —truck	1,206,250 " 12¢	144,750
rail	68,750 " 8¢	5,500
Sheep—truck	300,000 " 8¢	24,000
rail	900,000 " 6¢	54,000
Full yardage estimated in decision		$375,000
Yardage at *prescribed* rates on *actual* receipts in 1932		335,604
Excess of estimate as applied to 1932 business		$ 39,396

RESALE CHARGE ESTIMATED BY SECRETARY.

(See par. 201 of Secretary's decision (R. 126) and multiply estimated head under resales by prescribed rates.)

Cattle	75,000 @ 17.5¢	$ 13,125
Calves	5,000 @ 11¢	550
Hogs	200,000 @ 6¢	12,000
Sheep	2,500 @ 4¢	100
Total resale revenue estimated in decision		$ 25,775
Actual resale revenue at prescribed rates in 1932		4,972
Excess of estimate as applied to 1932 business		$ 20,803

FEED LOT YARDAGE ESTIMATED BY SECRETARY.

(Multiply numbers under feed lot, par. 201 of Secretary's decision (R. 126), by prescribed rates.)

Cattle	5,000 @ 60¢	$ 3,000
Hogs	1,200 @ 38¢	456
Sheep	85,000 @ 38¢	32,300
Revenue estimated by Secretary		$ 35,756
Actual revenue on basis of prescribed rates in 1932		21,743
Excess of estimate as applied to 1932 business		$ 14,013

REVENUE FROM FEED SALE.

Revenue from feed on quantities estimated in par. 204 and margins prescribed in par. 207 of Secretary's decision (R. 127, 128)	$ 78,800
Total revenue from feed in 1932	72,298
Excess of estimate over 1932 business	$ 6,502

REVENUE FROM MISCELLANEOUS CHARGES.

Estimated income from loading and unloading rail shipments (par. 208 of Secretary's decision (R. 129)	$22,500
Actual revenue from loading and unloading 1932 (R. 573)	19,592.25
Excess of estimate over 1932 business	$ 2,907.75
Income from miscellaneous stockyards operations estimated in par. 208 of Secretary's decision (R. 129)	$68,000.00
Actual income from miscellaneous stockyards operations (R. 573)	53,084.15
Excess of estimate over 1932 business	$14,915.85

SUMMARY OF ERRORS IN ESTIMATES.

Reasonable gross income as per par. 208 of Secretary's decision (R. 129)		$618,277
Prescribed rates applied to 1932 business:		
Full yardage	$335,604	
Income from sale of feed	72,298	
Income from loading and unloading	19,592	
Feed lot yardage	21,743	
Resale and reweigh charge	4,972	
Miscellaneous income	53,084	507,293
Deficit below reasonable gross income 1932		$110,984

It is estimated in the Secretary's decision (par. 208, R. 129) that under the prescribed rates appellant would receive a total gross revenue of $618,277. As we have demonstrated, if the prescribed rates had been applied to

the 1932 business, they would have produced $110,984 less gross revenue than that estimated by the Secretary, which would have reduced appellant's gross revenue to $507,293. If from this there were subtracted the reasonable operating expenses of $426,267, estimated by the Secretary in paragraph 208 of his decision, there would have remained to appellant only $81,026, or a return of approximately 2.95 per cent upon the fair value of $2,743,000 determined by the Secretary.

The facts stated above, all of which are mere mathematical computations taken from the Government's own evidence and from statements in the decision of the Secretary, demonstrate a disregard of the rules laid down by this Court in its construction of the statute, as well as the confiscatory character of the order. So far as this point is concerned, it is evident that it is not necessary for the Court to weigh conflicting evidence with respect to land values, structural values, income, annual depreciation reserve, and other operating expenses. We shall ask it to do so in other parts of the brief, for the record estabishes a right to a net income much in excess of $192,010 per year; but the decision condemns itself as violative of the statutory rules, and the order is based solely upon assumptions, speculations and prophecies, so far from the facts as to constitute an arbitrary abuse of discretion and plainly to result in confiscation. It is respectfully submitted that upon this point alone appellant is entitled to a reversal of the decree.

VIII.

IT WAS ERRONEOUS, AND CONTRARY TO THE INDISPUTABLE CHARACTER OF THE EVIDENCE, TO BASE ESTIMATES OF INCREASED REVENUE FOR THE FUTURE UPON A STUDY OF SIX YEARS, CONTRARY TO THE EVIDENCE WHICH DEMONSTRATES GRADUALLY DIMINISHING RECEIPTS THROUGHOUT THE PERIOD STUDIED.

This is in substance no. 10 of our points to be relied upon (R. 940), covering assignments of error nos. 53, 57, 60, 65 and 69 (R. 157, 158, 159) and included in proposed findings of fact nos. 17 and 18 (R. 144). The only finding in the decision of the Secretary upon which his order could be predicated is stated as follows in paragraph 168 of the decision (R. 115):

> "The rates hereafter prescribed in this order are based upon detailed studies of the financial operations of the business of the respondent during this six-year period, and upon a consideration of the history of the company and other facts with respect to it extending over a much longer period."

There are no findings which set forth the studies of the "financial operations of the business" during this six-year period, except the tabulation in paragraph 181 of the decision showing *expenses only.* In other words, this finding upon which the order is based is "a mere declaration of a commission" and "is not conclusive". *Great Northern R. Co.* v. *Minnesota,* 238 U. S. 340, 59 L. ed. 1337.

There are no specific findings as to appellant's net operating income from its stockyards operations as a whole or from any division thereof in any one of the years included in the six-year study or in a combination of any of them.

It is respectfully suggested also that this matter was inadequately treated in the opinion of the District Court. All of the facts presented in this brief were presented in substantially the same manner and in even greater detail in our brief before the District Court. This was a vital

point in the case. All that is stated in the opinion of the District Court (11 F. Supp. 322, 336) is the following:

"(C) Test Period.

(30) The Secretary used an estimated future volume of business to test the net return which would probably be received. This he used to ascertain if the particular rate schedule covered by the order would yield a net return equal to 7 per cent. In this estimate he states the numbers of different kinds of stock going to make up this volume. This estimate seems based upon actual receipts for the years 1928-1932. A comparison of the figures in the estimate (finding 201) with those of actual receipts for the above years (finding 195) convinces that his estimate is conservative if the actual receipts are at all any fair basis from which to reason. Petitioner attacks this period of experience as no proper criterion of the future volume. *It is true that conditions were abnormal in 1933 and yet are so, but there is no way of prophesying the future except by the past.* There may well be a reduced volume of receipts below the normal for the period chosen. *However, what, if any, reduction will occur is a matter purely of opinion,* and we can see no reason for thinking our opinion or that of petitioner would be more accurate than that of the Secretary. Certainly this is not convincingly shown." (Emphasis ours.)

The opinion of the District Court upon the entire subject matter argued in chapters IV-VIII hereof (covered by the single paragraph above quoted, entitled "Test Period") indicates that appellant's rates and charges may be reduced as the result of mere speculation, in which the Secretary has the right to make all of the assumptions, and appellant must bear the burden of erroneous forecasts. We submit that the Secretary should have waited until appellant's receipts of live stock and its income rose above a fair return before reducing the income. There is no room for the exercise of opinion when appellant's income was below the reasonable level at the time of the hearing.

The court remarks that it is "a matter purely of opinion" and that it "can see no reason for thinking our (the court's)

opinion or that of petitioner (appellant) would be more accurate than that of the Secretary." We submit that the question is not one which should be determined by mere conjecture on the part of the Secretary, the District Court, or appellant. On the contrary, there is evidence in the record which should have controlled the judgment of the Secretary. All of the evidence upon this point necessary to be considered was presented by the Government witnesses, although it was also corroborated by appellant's evidence. That evidence disclosed only one outstanding factor, namely, *diminishing receipts of live stock and diminishing revenue during the so-called test period of six years.*

As to receipts of live stock, the elaborate study in the record was made by the Government witness, Mr. Christensen (R. 408). This study is in Government exhibit 108, part I, at pages 11-36. This is one of the original exhibits certified to this court.

The court will search the record in vain for any evidence which supports the conclusions respecting fluctuations in market receipts and the basis for the estimate of receipts appearing in paragraphs 199 and 200 of the Secretary's decision (R. 125, 126), which form the basis of the estimate of receipts contained in paragraph 201 of the decision and the reduction in rates. A different conclusion is required by the evidence.

Two facts, as distinguished from assumptions, are stated in these paragraphs of the Secretary's decision. The first appears in paragraph 199:

> "Since 1928, the tendency has been downward."

The second is in paragraph 200:

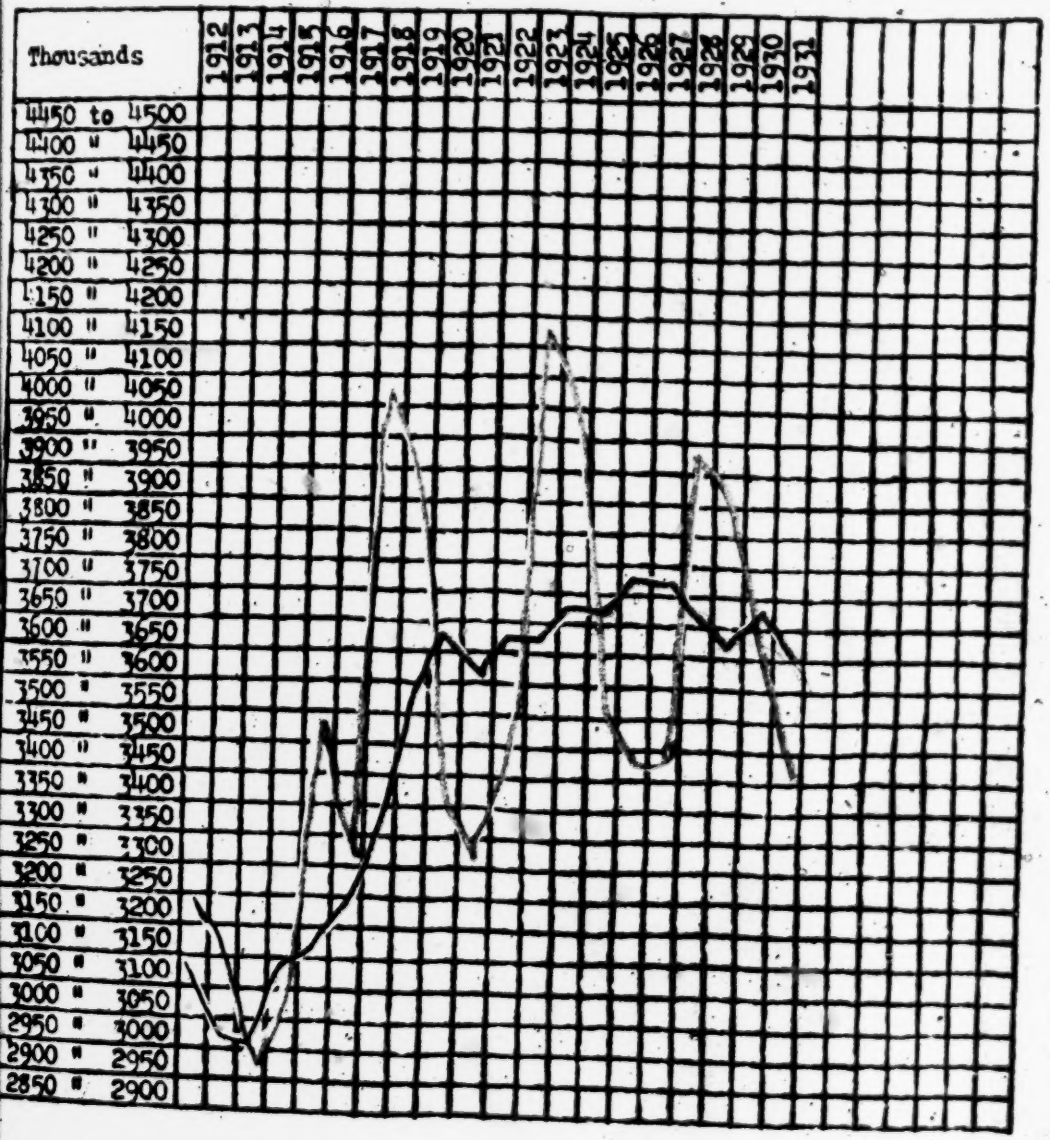
> "The years immediately preceding the dates of the hearings were years of comparatively low receipts."

Government witness Christensen stated that the important factor in predicting receipts is the five-year moving average shown in the tabulation on p. 12 of Government exhibit 108, part I (R. 408). A graph of the five-year

moving average appears on page 13 of Government exhibit 108. For convenience, this graph is here reproduced.

RECEIPTS OF LIVESTOCK

ALL SPECIES
Except Horses & Mules



Scale 50,000 to One
Red: Annual Receipts
Blue: Average Annual Receipts, five year moving periods.

The figures as well as the graph show that since 1926 there has been a downward tendency in the receipts of all species. The graph does not carry the computation through 1932, but by reference to page 14 of Government exhibit 111, (certified with the record) it will be observed that the total receipts of cattle, calves, hogs, and sheep in 1932 were 2,954,572 head *or 447,713 head less than the receipts in 1931.*

In connection with this exhibit, Government witness Christensen testified as follows:

> "The important factor is a five-year moving average. It shows the trend of most species of livestock downward. * * * I do not think the trend is an absolute governing factor as to whether the receipts will be larger or smaller in 1933 than in 1932. * * * It indicates that, judging by the past and other information which I would use in reaching conclusions, *receipts are not going to increase materially.* There may be a little increase from year to year or from month to month, but I do not see anything in the situation to lead me to believe there will be any appreciable increase." (R. 408.) (Emphasis ours.)

At the time of this decision the Secretary was using his statutory powers to reduce hog production. Before the Secretary announced this decision on May 4, 1934, and before the District Court announced its decision, the *agricultural adjustment act* (May 12, 1933, U. S. C. A. tit. 7, §§ 601-619) had been enacted. The Secretary of Agriculture had already inaugurated his corn-hog program the avowed purpose of which was to reduce the production of hogs by 25 per cent. The consequent reduction of hog production was much greater than had been anticipated by the Secretary. In this connection attention is called to the results for 1935, shown on p. 183 hereof in connection with our discussion of the denial of appellant's petition for rehearing. As a matter of fact, appellant's receipts of hogs have now been reduced by more than half compared with 1932.

At the time of this decision, the Secretary was in the inconsistent position of using his power under said statute to effect a 25 per cent reduction in the number of hogs to be marketed; and contemporaneously in his capacity as the regulating authority under the *Packers and Stockyards Act, 1921,* of predicting in this decision an increase in receipts of hogs to be marketed at appellant's stockyards.

Trend of appellant's income prior to hearing. The same trend is shown in appellant's income from its stockyards services as is shown in connection with live stock receipts. *No finding as to this income is made by the Secretary or the District Court for the six years upon which the decision is said to be based.* The facts upon which such a finding could and should have been made are, however, found in the Government's audit. This audit was made by Mr. H. E. Bufkin, field auditor for the Packers and Stockyards Division, United States Department of Agriculture (R. 440-443). The audit described in Mr. Bufkin's testimony is contained in Government exhibits 121-A, 121-B, and 121-C. These are among the original exhibits certified to this court in connection with the record. The income which the Secretary considers income for rate making purposes (Secretary's decision, par. 208 R. 129), the source of the figures in the Government audit, is as follows:

1. Yardage (p. 3 Government exhibit 121-A, p. 3 Government exhibit 121-B, and p. 4 Government exhibit 121-C).

2. Profit on feed and bedding. (Taken from gross feed sales shown on sheet 3 Government exhibit 121-A for all years except 1932 and cost of feed sales shown on page 4 of Government exhibit 121-A. Figures for 1932 taken from audit Government witness Bachmann (R. 573).

3. Loading and unloading. (Taken from p. 3 Government exhibit 121-A for years 1927-1931, inclusive, and Government audit for 1932 (R. 573).

4. Feed lot yardage. (p. 3 Government exhibit 121-A for 1927-1931, inclusive, R. 573, for 1932).

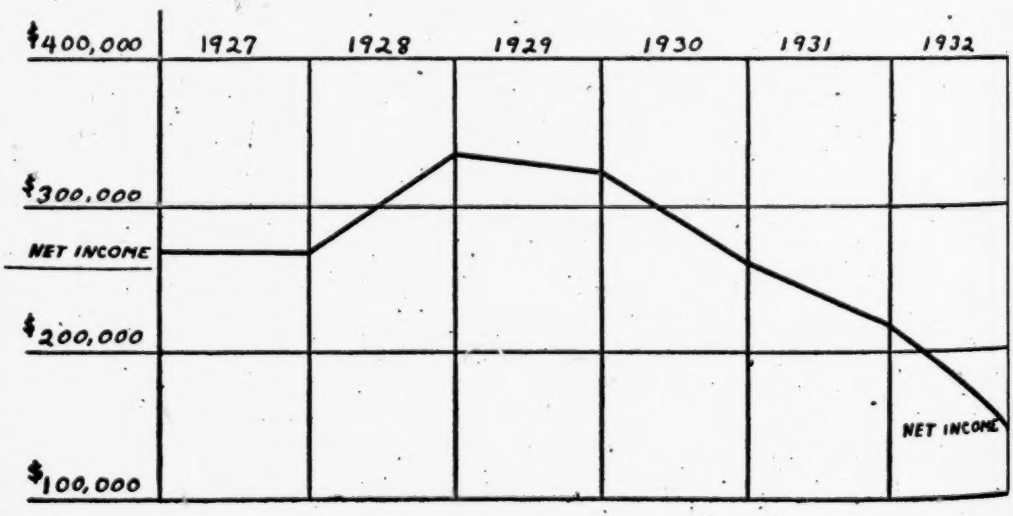
5. Miscellaneous stockyards operations. (p. 3 Government exhibit 121-A for 1927-1931, inclusive, and R. 573, for 1932).

The following table shows the above figures for these five items of stockyards income for rate making purposes by years for the period 1927-1932 inclusive, as obtained from the sources indicated above.

Year	Yardage	Profit on Feed and Bedding	Loading and Unloading	Feed Lot Yardage	Miscellaneous Stockyards Operations
1927	$482,735.60	$155,513.18	$50,031.00	$1,880.00	$66,641.71
1928	519,677.25	176,320.34	52,011.00	2,400.00	66,793.10
1929	520,086.96	166,989.45	46,179.00	2,424.00	68,651.08
1930	497,131.60	149,994.19	38,091.00	4,406.73	60,431.46
1931	463,326.00	125,095.75	28,422.00	8,165.82	61,881.03
1932	415,680.53	72,298.00	19,592.25	3,320.75	53,085.15

In order to visualize the trends here shown, we insert the following graph which charts appellant's net income, 1927-1932, in accordance with the expenses allowed by the Secretary. See table p. 55 herein.

GRAPH SHOWING TREND OF APPELLANT'S INCOME, 1927-1932, INC.



Reasons for diminishing receipts of live stock and revenues. The record shows a falling off in business not accounted for by the depression. Some of the reasons are stated in the testimony of Mr. C. F. Topping, appellant's president (R. 825-826). Mr. Topping testified that appellant has encountered additional competition since 1929; there has been more of a tendency for packers to buy hogs direct at country points rather than at St. Joseph and other public markets; there has been an increased tendency to buy stocker and feeder cattle and calves at country points and at ranches; and these tendencies were evident before the depression was felt. Mr. Topping expressed the opinion, based upon his experience and in view of the tendencies mentioned, that appellant could not reasonably anticipate increased receipts in the future and that an average of the gross and net income for the years 1927-1932, inclusive, would not be a fair basis upon which to estimate appellant's net income for the next few years (R. 826).

The reduction in profit from feed sales appears also to be permanent. A great increase in receipts of live stock at the yards by truck rather than by rail is shown in Government witness Christensen's exhibit 108, part I, pages 11-36. The result of this change from receipts by rail to receipts by truck upon the amount of feed sold was the subject of a study by one of appellant's witnesses (R. 877). The fact is that, in connection with movements by truck, the shipper either feeds the live stock before it is placed upon the truck or the trucker carries feed along in the truck, so that the necessity for purchasing feed at the stockyards while the live stock is awaiting sale is much reduced. The amount of feed sold is lessened also by the reduction in the total receipts of live stock. In view of the fact that the

arrival of the major portion of live stock by truck is a condition which appears to be permanent, there is no reason to believe that the profits from the sale of feed will ever again exceed those for 1932.

The total revenue from loading and unloading railroad cars dropped from $50,031 in 1927 to $19,592 in 1932. This again is due to the fact that the major portion of the live stock is now brought to the stockyards by truck rather than by rail. No specific charge is made for unloading trucks. Government exhibit 108, pages 27-36, inclusive, (one of the original exhibits certified in this case) is a study of the movement of live stock to appellant's stockyards by rail and truck in the years 1893 to 1931, inclusive. It shows a gradual and substantial increase in the receipts by truck from the year 1920 onward. In 1927, 79 per cent of the live stock (based upon number of head) arrived by rail and 21 per cent by truck, whereas in 1931 52 per cent arrived by rail and 48 per cent by truck. In 1932, 49 per cent arrived by rail and 51 per cent by truck (R. 883). Inasmuch as this loading and unloading revenue comes only from unloading and loading railroad cars, there is no reason to assume that the revenue from this source will ever exceed that in 1932.

The reduction in income from miscellaneous stockyards operations (principally rental from the Exchange Building) has not been so marked as the reduction in some other classes of revenue; but there is no reason to assume that it will increase in the future. In 1932 it was only $53,084, but in estimating income for the future the Secretary assumes the revenue from miscellaneous stockyards operations at $68,000 (Secretary's decision, par. 208, R. 129). There is no evidence in the record which would justify a finding that this class of revenue will be increased by approximately $15,000 a year.

To base reduced rates upon predictions of increased revenue was contrary to indisputable character of the evidence and therefore arbitrary and void. While no specific findings are made in the decision of the Secretary upon the facts here summarized, it is evident that, in prescribing a basis of rates for the future, the Secretary disregarded the trends in appellant's business during recent years. It was *arbitrary* for the Secretary to disregard the guiding finger of the evidence and to substitute his own speculation and prophecy, especially at a time when appellant was not, upon the Secretary's own proof, receiving even the fair return determined by the Secretary.

The Secretary and the District Court fell into an error which may perhaps best be explained by an illustration. The Secretary in his first decision fixed a certain value. In this decision he fixed a lower value. It could only be by comparing the *present lower* value with *higher* income in *past* years that a conclusion could be reached that appellant's present rates are unreasonable. Let us assume that a utility operated a property of a fair value of $1,000,000 in 1927; that thereafter there was a general decline in price levels as well as a decline in the amount of business done by the utility; that in each year thereafter the fair value of the utility declined $100,000; and that in each year the utility earned exactly 7 per cent upon the fair value in that year. The result would be expressed as follows:

	Fair Value	Net Income
1927	$1,000,000	$70,000
1928	900,000	63,000
1929	800,000	56,000
1930	700,000	49,000
1931	600,000	42,000
1932	500,000	35,000
Average	$ 750,000	$52,500

The net income each year would have been exactly 7 per

cent of the fair value for that year; and the average net income would have been 7 per cent of the average value during the said six years. But, to borrow the language of the Secretary (decision, par. 168, R. 115), "based upon detailed studies of the financial operations of the business" of the company "during this six year period" and applying them to the 1932 value, the conclusion would follow that the company had a net income of 10.5 per cent upon its fair value ($52,500 ÷ $500,000) and, therefore, the rates were unreasonable. If trends in income and values need not be matched against each other, then any *past* period of prosperity as to income may be matched against any *present or future depressed value* of the property to show that the *present rates* are unreasonable. To attempt to base a conclusion upon such unrelated facts is arbitrary.

IX.

THE DISTRICT COURT ERRED IN FAILING TO FIND THAT AT THE TIME OF THE HEARING APPELLANT WAS APPLYING A RESALE CHARGE EQUIVALENT TO THAT PRESCRIBED BY THE SECRETARY UPON ALL SHIPMENTS OF LIVE STOCK TO WHICH SUCH CHARGE COULD BE APPLIED UNDER THE SECRETARY'S ORDER; THAT THEREFORE APPELLANT COULD NOT OBTAIN FROM SUCH CHARGES AS WERE PRESCRIBED BY THE SECRETARY THE INCREASED REVENUE CONTEMPLATED IN THE DECISION AND ORDER OF THE SECRETARY; AND THAT THE SECRETARY'S FINDINGS IN RESPECT THERETO WERE SPECULATIVE, CONTRARY TO THE EVIDENCE, AND BEYOND THE STATUTORY POWER OF THE SECRETARY.

The issue with respect to the revenue to be obtained from a charge of one-half of the regular yardage charge upon live stock "resold or reweighed for purpose of sale" was raised by section IX, paragraph (L) of appellant's petition in the District Court (R. 13). It was in substance alleged that the order of the Secretary in this con-

nection did not make any finding that appellant's practices were unreasonable or unjustly discriminatory; that the Secretary ordered appellant's rates and charges reduced, in part upon the assumption that it would receive additional revenue from a new source, namely, said half yardage charge; that basing the reduction of appellant's rates in part upon additional revenue to be derived from the resale charge was not justified by any evidence of record, was arbitrary, and confiscatory of appellant's property. This allegation of the bill was in part admitted and in part denied in section 6, paragraph (l) of the Government's answer (R. 136). The issue was argued before the District Court, at pages 314-322 of appellant's opening brief in that court; at pages 143-160 of the Government's brief in the District Court; and at pages 27-28 of appellant's reply brief in the District Court.

This issue is not mentioned in the decision of the District Court. Upon this issue the court made no finding whatever, not even that there was some evidence sustaining the decision of the Secretary. The failure of the District Court to make findings in accordance with the evidence upon this question is assigned as error in assignments of error nos. 83-87, inclusive; it is covered by point no. 15 in our statement of points to be relied upon; and by our proposed findings of fact nos. 21 and 22 (R. 144).

In view of the failure of the District Court to make any findings whatsoever upon this issue, it becomes necessary to present it in substance *de novo.* The real substance of the injury to appellant in this connection is not the application of a half yardage charge on shipments "resold or reweighed for purpose of sale", because appellant is now making and for many years has made a charge of that kind which is approximately equal to that prescribed in the decision of the Secretary.

The charges prescribed by the Secretary differ from those of appellant in only one instance, namely, that the former are 1.5 cents per head lower on calves than the charge now made by appellant. As the number of calves resold is negligible, this difference in rates would not appreciably affect appellant's income.

It will be noted, however, that in paragraph 201 of the Secretary's decision (R. 126), the Secretary estimates that the resale half yardage charge could and would be applied on 75,000 cattle, 5,000 calves, 200,000 hogs, and 2,500 sheep. This would produce revenue from that source, under the prescribed rates, of $25,775, as shown in the table at page 71 of this brief. But this charge could not be applied to more animals than the number to which it was applied in 1932; and its application in that year would have produced revenue of only $4,972.

The error is that the Secretary has plainly overestimated the income from this source by $20,803 (see table, p. 71, this brief). This estimate of $20,803 is treated as additional revenue which would come to appellant under the Secretary's order and is used as a credit against the prescribed reductions in regular yardage charges and feed margins, thereby making the net reduction apparently less than it would actually be.

Appellant's contention is that there is no possibility, even remote, of this additional resale yardage revenue being obtained by appellant because such charges are now being assessed against all shipments upon which they could be assessed under the Secretary's order. In order to present the matter completely at this point, we first quote the present provisions of appellant's tariff with regard to this charge (Government exhibit 101, R. 397, item No. 1):

> "Live stock forwarded or driven to country from yard, without change of ownership or being weighed, yardage will be waived. Live stock resold in commission division, one-half the above rates additional will be collected."

The following statements in connection with this subject are to be found in the Secretary's decision. The first is contained in paragraph 20 (R. 35):

> "20. Dealers or traders and others who have purchased livestock in the stockyard sometimes place it with a 'commission man' to be resold. Such livestock is said to be 'planted' and sometimes it is referred to as 'seconds.' When such livestock is resold, respondent charges to the vendor thereof the one-half rates mentioned in the preceding paragraph. No such charge is scheduled to cover resales made elsewhere than in the 'commission division,' *but in practice respondent does not observe its published tariff in this regard and imposes the one-half charges on resales wheresoever made* if they do not involve livestock 'to go to the country,' that is, purchased by farmers to be fed." (Emphasis ours)

In paragraph 26 of the decision (R. 36), the following statement appears:

> "For the use of these facilities and for these services respondent makes no charge to the trader on livestock sold 'to go to the country' and only a half charge on that sold for other purposes."

The findings and conclusions of the Secretary upon this subject are stated in paragraph 196 (R. 124) which reads as follows:

> "196. The tariff of the respondent provides for a charge on livestock resold in the commission division equal to one-half of that charged upon livestock arriving by rail. The testimony of witnesses for the respondent is to the effect that respondent makes a charge on all resales, except on livestock going to the country, of one-half the original yardage, irrespective of whether resale occurs in the commission division or in other parts of the stockyard. The evidence indicates that respondent is not making charges for resales in accordance with the provisions of its published tariff. The record shows for the years 1931 and 1932 the number of livestock of each species to which a general resale or reweigh charge would apply. The record shows the total number of head of each species

of livestock handled by *dealers* for the years 1931 to 1932 and also the total number of head of each species shipped by *dealers on consignment* to other markets. The difference represents the number upon which a general resale or reweigh charge may be made applicable. For the year 1931 the number of head of livestock to which a reweigh or resale charge would apply was 91,730 head of cattle and calves, 267,730 hogs and 4,059 sheep. The corresponding figures for 1932 were 76,560 cattle, 180,393 hogs and 1,939 sheep. The average of these figures for the two years is 84,154 cattle, 224,061 hogs and 2,999 sheep." (Emphasis ours)

As to the statement in paragraph 196 that appellant was not making the charge for resales in accordance with the provisions of the published tariff, it is apparent from the decision that the Secretary did not intend to say that appellant was charging *less* than it should charge under its published tariff, but he intended to find that, regardless of the language of the tariff, appellant has been charging the half yardage whether the resale was made in the commission division or in some other part of the yards.

In paragraph 201 of the decision (R. 126), the Secretary states his estimate of the number of live stock upon which the half yardage charge would be applied under the caption "Resales." Applying to that estimate the half yardage rates prescribed by the Secretary (the details of this computation appear on page 71 of this brief) shows that the Secretary estimated that appellant would obtain from this charge the sum of $25,775 per annum. In 1932 the actual revenue obtained from this resale or reweigh charge, under the slightly *higher* resale rates maintained by appellant, was $4,972. The details which brought about that total appear in lines 25-29, inclusive, of the tabulation on page 41 of this brief. Thus the Secretary estimated that appellant's revenue would be increased from this charge by $20,803. It should be noted that, in order to

obtain this $4,972, appellant applied this charge not only under the terms of this tariff, that is, to live stock resold in the commission division, but also, contrary to its tariff, to live stock resold in other parts of the yard.

The conclusion reached by the Secretary rests upon a very plain and demonstrable error. The estimated *increase* in resale yardage is predicated upon the assumption that *order buyers* would pay a resale yardage under the erroneous idea that they *are not order buyers but are dealers.* Mr. Bufkin, the Government witness who audited appellant's accounts, introduced figures into the record purporting to show the trading transactions of *dealers* (R. 568, 569, 570). The largest account was that of Corrigan and Symon (R. 570). Bufkin asserted that his figures showed the number of head *resold* by these *dealers* on which no resale yardage was paid (R. 569). In rebuttal, appellant called as a witness Robert G. Symon, resident partner of Corrigan and Symon. Mr. Symon testified that he is not a *dealer* but is a *live stock order buyer.* He testified that he is registered with the Secretary of Agriculture as an *order buyer* and files with the Secretary charges covering his services as an *order buyer* (R. 885). Concerning the year 1932, Mr. Symon testified as follows:

> "I only purchased 166,242 hogs. The bulk of these hogs were shipped on *orders* and the balance were sold in the St. Joseph Stock Yards. We *resold* and reweighed 16,546 hogs at the St. Joseph Stock Yards and *paid the reyardage or half yardage charge applicable to resales on the market.* 1,356 of these hogs were shipped to other markets for sale; that left a balance of 148,340 hogs and *they were all shipped on orders.* I am registered with the Secretary of Agriculture as an *order buyer* and publish with the Secretary charges covering my services as an *order buyer.* In respect to each and every one of the hogs covered by this 148,340 which I shipped on order I charged the published charge for my services as an order buyer. * * * These 148,340 hogs which we shipped on orders in the year 1932 *were not resold* on the St. Joseph market." (R. 885-886) (Emphasis ours).

The testimony of Mr. Symon was undisputed by the Government and no evidence was offered in rebuttal to his testimony.

In paragraph 196 of the decision (R. 124) the Secretary finds that the resale half yardage charge could have been applied in that year to 180,393 hogs. The testimony of Mr. Symon shows that 148,340 of those hogs were not *resold* on the St. Joseph market. Consequently the Secretary erred to that amount, which would have left only 32,053 hogs upon which the resale charge could have been applied in 1932 if the Secretary's estimate had been correct. The resale charge was in fact applied in 1932 upon 25,224 hogs, as shown in line 28 of the table on page 41 of this brief.

It should be noted that the charge prescribed by the Secretary in paragraph 207 of the decision (R. 128) is to be applied upon live stock "*resold* or reweighed for purpose of *sale.*" The testimony of Mr. Symon shows that the 148,340 hogs included by the Secretary in his estimate were not *resold* within the St. Joseph Stock Yards and therefore the charge could not have been imposed upon those hogs.

The Court doubtless knows that the *order buyer* is simply an *agent* at appellant's stockyards of *packers located at other points.* Upon orders received by letter, telegram, telephone, or otherwise, an order buyer, such as Mr. Symon, purchases the required number of hogs or other live stock and ships them to his principal. The transaction is not different from that of the local packer whose buyer goes into the yards and buys live stock for the local packing house, for which only the single yardage charge applies.

In addition to this testimony of Mr. Symon, we have the uncontradicted testimony of Mr. C. F. Topping, appellant's president, (R. 826) to the effect that the resale charge was, at the time of the hearing, being applied to

all live stock resold in appellant's yards. Upon this subject, Mr. Topping testified as follows (R. 826):

> "If a dealer or trader has purchased livestock in the yard, and *resells* it in the yard to another dealer or trader or to a packer or an order buyer or a commission firm, the dealer or trader who *sells* the livestock is required to pay a yardage charge regardless of whether the resale takes place in the commission division or the traders division. * * * The one-half yardage charge is imposed on all livestock *sold* in the stockyards when the actual *sale* is made to another buyer in the yards, except when it is bought to go to the country to feed." (Emphasis ours)

The point we desire to emphasize is that, *if the Secretary's order were now in effect, the record plainly shows that no greater amount could be obtained from this charge than that which has accrued from the transactions to which it has been applied in the past.* There is no suggestion in the Secretary's decision or order that this *resale* charge may be or can be applied against an *order buyer* who purchases live stock for shipment to packers at other cities. The obvious reason is that there is no *resale* at the St. Joseph Stock Yards. The very form of the order denies the possibility of such an application of the charge. It provides that the charge shall be assessed upon animals "*resold* or reweighed for purpose of *sale.*"

The arbitrary effect of the decision in this connection is that, based upon this erroneous application of the *resale* charge, the Secretary *estimates* that under his prescribed rates appellant's gross income would be increased, as applied to 1932, by $20,803 per year, which would be an offset against the *reductions* in yardage and feed. Where the total net operating income to be permitted under the decision is only $192,010, an error of $20,803 in income becomes very important and, added to other errors, results in confiscation.

It might well be contended that the Secretary exceeded his lawful authority even if it were possible to impose the resale yardage charge. It was so held by the District Court in *Denver Union Stock Yards Co.* v. *United States,* 57 F. (2d) 735. The distinction between that case and the present is that in that case the stockyards company apparently was not imposing the resale charge and did not desire to do so, while in the present case appellant imposes the resale charge and has undertaken to collect it upon all live stock *resold* in its yards. Suggesting that this distinction be kept in mind, we quote for convenience certain of the conclusions of the District Court in the *Denver Union Stock Yards Company case* upon this issue (pp. 751-752):

> "When cattle are shipped to the Denver stockyards, they are destined either for the packing house or the feeding pens. It is a matter of no importance that, in the course of that journey, the title passes through a trader. * * * In any event, it seems to us to be well within the power of the petitioner to exact but one yardage charge for the service rendered the shipper, whether or not the title to his cattle passes through the hands of a trader. * * * It occurs to us that the settled and existing policy of the petitioner is sound; but that is not for us to decide. Neither is it for the Secretary; it is a question of business management, confided by the law and the decided cases, to the owners of the property. *We conclude that the Secretary erred in charging against the income of the petitioner a toll which it does not exact, and which the Secretary has no power to require it to exact.*" (Emphasis ours)

It is respectfully submitted that the District Court erred *in failing to make any finding whatsoever upon this important point,* which was squarely in issue under appellant's bill and the Government's answer, which was the subject of testimony on behalf of the Government and of appellant, and of a very substantial amount of argument

in the briefs of both parties in the District Court. A finding upon this point was requested in appellant's "petition for supplemental findings of fact and conclusions of law" (proposed findings nos. 21 and 22 (R. 144)).

X.

THE DISTRICT COURT ERRED IN FAILING TO FIND THAT THE ORDER OF THE SECRETARY WITH RESPECT TO FEED LOT CHARGES WAS VOID.

This point is stated with more elaboration in no. 14 of our statement of points to be relied upon and in assignments of error nos. 78-82, inclusive. Findings were requested in proposed findings of fact nos. 19 and 20. The real point in issue here is that the Secretary *proposed* but did not *prescribe* a vastly increased charge which appellant does not desire and cannot obtain. It is the contention that the finding is void for reasons to be hereafter stated.

Facts relating to feed lot yardage. Certain of the land and structures which the Secretary has found used and useful are devoted to feed lots. The live stock fed there is principally sheep. The nature of this business may be briefly summarized by saying that persons desiring to carry on this business purchase sheep upon arrival at appellant's stockyards; for this they pay the regular full yardage charge. They hold the sheep in the feed lots and when a sufficient amount has been fed the sheep are usually sold in the feed lots. When sold appellant again obtains the full yardage charge. Thus, from this class of business, appellant obtains the full yardage charge when the sheep come to the market, the feed lot charge for the period during which the sheep are in the feed lots, and the full yardage charge when the sheep are again sold after fattening.

In the table below are the rates for feed lot yardage

at present published and charged by appellant, the rates suggested in the order of the Secretary, the amount of the increase in cents per ~~100 pounds~~ and in percentage:

FEED LOT YARDAGE.

	Present	Proposed	Increase
Cattle—			
Where land only is furnished	15¢	60¢	45¢—300%
Where sheds and other enclosures are furnished	35¢	60¢	25¢— 71%
Hogs	5¢	38¢	33¢—660%
Sheep	5¢	38¢	33¢—660%

The Secretary has not prescribed these feed lot charges as a minimum below which appellant may not go. This is admitted in the answer of the Government (R. 136). It is therefore not open to dispute that the Secretary was not here exercising his power to *prescribe* the *minimum* rate for the feed lot service but was simply *suggesting* a higher charge which might be made.

Upon this permissible higher charge was predicated an estimate of increased income to appellant. In paragraph 201 of the decision (R. 126), the Secretary estimates that the feed lot charges prescribed by him would be applied to 5,000 cattle, 1,200 hogs, and 85,000 sheep. This would produce revenue of $35,756 per year. As a matter of fact, in 1932 there were on the feed lots only 2,321 cattle, 1,198 hogs, and 52,358 sheep. Thus at the time of the hearing, if the rates proposed by the Secretary had been applied to the actual number of live stock which used the feed lot facilities, the revenue would have been only $21,743. The Secretary's estimate of the revenue resulting from the rates prescribed by him exceeded the revenue which would have been received by $14,013. Under the rates charged

by appellant the revenue from feed lot operations in 1932 was only $3,320.75. Thus the revenue estimated by the Secretary of $35,756 exceeds by $32,435.25 the amount which appellant could actually obtain. This is merely a fictitious estimate of revenue which it is erroneously estimated could be obtained by appellant in order to mitigate the actual reductions in revenue which would result from the maxima rates prescribed by the Secretary for general yardage and feed charges.

The subject is treated in the decision of the District Court, 11 F. Supp., at pages 337 and 338. It is respectfully submitted, however, that the court did not make the specific findings upon which a conclusion as to the validity of this portion of the Secretary's order must be based. A general discussion of the use of the feed lots and the finding that they are a part of appellant's property used and useful for rate making purposes appears in paragraph 58 of the Secretary's decision (R. 57). Further references to the portions of the property used as feed lots are to be found in paragraphs 64, 70, 77, 82, 85, and 87 of the Secretary's decision (R. 59, 61, 65, 66, 68, 69).

The finding of the Secretary upon which the proposed increase in feed lot charges is based is found in paragraph 206 of his decision (R. 128) and reads as follows:

> "Moreover, under the existing schedule shippers of livestock who consign their animals to commission men are charged more by the respondent for the use of its facilities in handling such livestock for a shorter period of time than are those who use that portion of its facilities hereinbefore referred to as feed lots for a much longer period of time. It is found that the schedule of rates and charges now in effect is unreasonable and unjustly discriminatory."

The Secretary does not intend to find that these charges are unreasonably *high* but that they are unreasonably *low*. The revision of the relative level is based upon a finding of unjust discrimination.

The basis for the contention that the decision is void in so far as it relates to feed lot charges, and the predication thereon of any reduction in yardage charges, may be summarized as follows:

1. THE DECISION OF THE SECRETARY DOES NOT CONTAIN ANY FINDINGS OF A NATURE WHICH SUPPORT THE ORDER.

2. UPON THIS QUESTION, THERE WAS NO HEARING BEFORE THE SECRETARY IN ANY TRUE SENSE.

3. THE EVIDENCE IN THE RECORD DOES NOT SUPPORT THE CONCLUSIONS STATED BY THE SECRETARY.

4. ALTHOUGH THE ORDER WAS BASED UPON A FINDING OF UNJUST DISCRIMINATION, NO ALTERNATIVE WAS PERMITTED TO APPELLANT AS TO THE MANNER OF REMOVING THAT DISCRIMINATION.

We discuss these points in the order stated.

1. *No findings to support the order of the Secretary.* We have quoted above the only finding, if it may be called such, upon which the Secretary predicates the change in feed lot charges and the estimated increase in revenue of $32,435 from that source. It will be noted that the decision does not state—

(a) The value of the feed lots.

(b) Cost of maintaining the feed lots.

(c) Present or probable profit from the feed lots.

(d) The amount which the present users of the feed lots are able or willing to pay.

(e) The benefit to the general revenues of appellant from the maintenance of the feed lots.

In the answer of the Government to the argument presented in appellant's brief upon this point in the District Court, it is evident that a belated effort was made to try to justify the action taken by the Secretary. It was there stated in substance that the area

of the land occupied by the various feed lots is set out in various Government exhibits; that the value of the zones in which the feed lots are located is set out in the order of the Secretary, paragraph 121; that the value of the structures on these feed lots is set out in Government exhibits 114, 114-A, 114-B, and 114-C; and that the feed lot charges prescribed by the Secretary applied to the volume of live stock estimated by him would be sufficient to afford a fair return upon the value of the feed lots. This was evidently an after-thought. None of the facts stated in the brief of the Government in the District Court as to the areas of the feed lots, value of land, value of structures, etc., or any of the expenses in connection therewith, are to be found in the decision of the Secretary. *It is submitted, therefore, that the order is void because of lack of the necessary findings.* This is certainly one of the points where, after reviewing the entire decision of the Secretary as well as the decision of the District Court, this Court would be "left to spell out, to argue, to choose between conflicting inferences." *United States* v. *Chicago, M., St. P. & P. R. Co.*, 294 U. S. 499, 510, 511, 79 L. ed. 1023, 1032.

2. *No hearing in any true sense.* The proposal by the Secretary of tremendously increased charges for the use of the feed lots, upon this record, was plainly an exercise of arbitrary power, at variance with the rudiments of fair play and as such violates the due process of law clause. *Chicago, M. & St. P. R. Co.* v. *Polt*, 232 U. S. 165, 168, 58 L. ed. 554, 555; *West Ohio Gas Co.* v. *Public Utilities Com.*, 294 U. S. 63, 71, 79 L. ed. 761, 769.

The printed record on this appeal contains all of the testimony in connection with the feed lots. *The Court will find therein no testimony relating to any proposed change in the feed lot charges on the part of the Government witnesses or others.* No such question was anticipated

by appellant and therefore it offered no evidence upon that subject. No one interested in this subject, on behalf of the Government, the appellant, or those who use and pay the feed lot charges, had any notice that an increase in such charges was under consideration or contemplated by the Secretary. Nor was such intention on the part of the Secretary indicated in the order of July 19, 1932, under which this proceeding was reopened (R. 394). This situation followed naturally from the course of events stated below.

In the first decision, the feed lots, although used for the same purpose and by practically the same people, were excluded by the Secretary from the value of appellant's property used and useful for rate making purposes (see first decision, pars. 44 and 47-51, inc., appendix to brief, pp. 25 and 27-29).

Upon the second hearing, all of the testimony concerning used and useful property on behalf of the Government was offered by the Government witness, Mr. Christensen. Adhering to the opinion expressed by the Secretary in his first decision, Mr. Christensen testified with respect to the feed lots (R. 403):

> "I think both the land and structures are not used and useful in connection with the rendition of stockyards services for the reason that they are not used as a market for livestock."

In view of the testimony of the Government witness to the effect that the feed lots should be excluded upon the second hearing; the fact that they had been excluded by the Secretary in the first decision; and that no testimony was offered on behalf of the Government with respect to any proposed change in the feed lot charges, it was not assumed that that subject constituted a part of the investigation and, as a consequence, no evidence as to feed lot charges was offered in connection therewith by appel-

lant. The whole theory of the Government on the hearing before the Secretary was that the feed lots should be excluded from the property used and useful for rate making purposes.

In the present decision the Secretary reversed his first decision and included the feed lots and the structures thereon amongst the property used and useful for rate making purposes. But at the same time, without notice or hearing, he proposes to increase the feed lot charges by the amounts above stated which make the increases range from 71 per cent to 660 per cent. Obviously, this action as to the proposed increase in charges was in the nature of surprise, and could not have been anticipated by appellant.

The finding with respect to the feed lots being without any support in the testimony, when the case was before the District Court (apparently as a matter of after-thought) counsel for the Government attempted, out of the numerous exhibits stating areas, etc., to set up a value for the feed lots and to estimate a fair return thereon. *The argument there made, however, was not based upon any findings contained in the decision of the Secretary.*

It is respectfully submitted that, in view of the facts above stated with respect to the feed lot charges, appellant was denied the full hearing and the fair play which are a fundamental part of due process where a schedule of rates is being changed by an administrative tribunal.

3. *The evidence does not support the conclusion that the returns from the feed lots are inadequate for the results which the feed lots were intended to produce.* The court will appreciate that not each piece or square foot of property can be expected to bring in an equal return upon the fair value of the property. Some parts of an operation may have to be conducted at a moderate rate because of their beneficial effect upon other parts. Not each branch line

of a railroad, nor each commodity carried by a railroad, necessarily contributes the same percentage of profit as each other branch or commodity.

The reason for the establishment of the feed lots and the maintenance of the charges which have been made by appellant are fully disclosed in the evidence.

(a) The feed lots were established to increase receipts, particularly of sheep, and they have done so (R. 818). In the first hearing, Mr. J. O. Barkley, then manager of appellant's company, testified that when the sheep feeding was established in 1922, 729,784 head of sheep were received. The number was increased in 1923 to 979,488; in 1924 to 1,088,731; in 1926 to 1,302,746; and in 1928 to 1,579,572 (Government exhibit 111). The reason for the establishment of the facilities and the increase in receipts of sheep was as follows:

Prior to the establishment of the feed lots, appellant did not have a market for what is known as the feeder part of a band of sheep. From the range country, the sheep master likes to ship his entire band, some of which are ready for slaughter and some only for feeding. Such a shipper will send his sheep to the market where there is an outlet for all classes of sheep, old and young, fat and lean. By setting up these feed lot facilities, appellant established an attractive market for all classes of sheep, thus enabling the range master to ship his entire band at one time.

(b) Appellant collects double yardage on animals taken to the feed lots (R. 819, 832, 834). That is to say, the regular yardage charge is collected when the live stock is purchased at appellant's stock yards by the feed lot operator, and the regular yardage charge is again collected when the feed lot operator later sells the live stock usually in the feed lots.

In estimating the revenue from this source, the Secre-

tary has overlooked one necessary deduction. Appellant now obtains its full yardage charge when the sheep at the feed lots are resold. Under the order of the Secretary (par. 207, R. 128) appellant could obtain only a half yardage charge when the live stock in the feed lots is resold. Applying the half yardage charge in paragraph 207 of the decision to the estimated number of head in paragraph 201 of the decision would reduce this yardage revenue by $6,357.

(c) The feed lots constitute, in the main, facilities which were formerly used for other functions, such as the southern cattle division and the horse and mule division (R. 818). Thus the feed lots furnish a useful source of revenue for land and buildings which could no longer function for the purpose to which they had originally been dedicated.

(d) Part of the feed lots are used for the Baby Beef and Pig Club Show (R. 823-25) and the regular yardage is charged upon all animals held in such show. This is included in the regular yardage charge stated in the Government audit (R. 825).

(e) The testimony shows that, if to the direct revenue received under item 12 of appellant's tariff (the feed lot yardage charge) were added the full yardage which accrues when live stock is brought to the market for the feed lots and when it is resold from the feed lots, the feed lot facilities earn a fair return upon their value (R. 848).

(f) From many of appellant's facilities, such as sewers, water pipe, etc., it obtains no direct return. To attempt to establish a system of charges under which each beneficial facility must stand upon its own feet would not only be contrary to the universal practice but contrary to common sense business operations (R. 848).

The evidence shows that the feed lots were established for a sound business purpose, namely, to increase appel-

lant's receipts of sheep; that they have accomplished that purpose; that all of the revenues directly attributable to them result in having the feed lots pay their own way; that no evidence was taken as to whether the feed lot charges might reasonably be increased; that they form a part of appellant's general facilities in connection with "the receiving, buying, or selling on a commission basis or otherwise, marketing, feeding, watering, holding, delivery, shipment, weighing, or handling, in commerce, of livestock." (U. S. C. A. tit. 7, § 201 (b)).

4. *The finding is void because, although based upon a conclusion that the present charges result in unjust discrimination, appellant is offered no alternative as to the removal of the discrimination.* The portion of paragraph 206 (R. 128) of the Secretary's decision heretofore quoted shows that the proposed change in the feed lot yardage is based upon a conclusion that the present charges are unjustly discriminatory. The net result is that the Secretary indulges in an assumption that from this portion of its business appellant will be able to obtain revenue which in 1932 exceeded that actually obtained from the feed lots by $32,435, and that the level of appellant's charges for regular yardage and feed may be reduced by that amount without making any change in appellant's net income.

If this were a fact, appellant was entitled to have an alternative as to the method of removal, so that it might determine whether it could obtain all or any part of the increased revenue suggested by the Secretary and, consequently, *not forego in its general yardage charges any greater amount of revenue than that which it might be able to obtain, if any, from an increase in its feed lot charges.* In denying such an alternative to appellant, the Secretary has committed an error of law which makes the order void.

Section 305 of the *Packers and Stockyards Act, 1921*

(U. S. C. A. tit. 7, § 206) which prohibits any discriminatory rate or charge, is similar in language and purpose to section 3 of the *interstate commerce act* (U. S. C. A. tit. 49, § 3, par. (1)). Each prohibits discrimination. The discrimination section of the *interstate commerce act* has been frequently construed by this court and the same construction is necessarily applicable to the similar provisions of the *Packers and Stockyards Act, 1921. Tagg Bros. & Moorhead* v. *United States*, 280 U. S. 420, 442, 74 L. ed. 524, 536. This Court has definitely held that, where discrimination is found, a real alternative as to its removal must be afforded to the offender.

It was so held in *Skinner & Eddy Corp.* v. *United States*, 249 U. S. 557, 63 L. ed. 772, at page 566, where the Court said:

> "The order prohibiting the unjust discrimination, however, leaves the carrier free to continue the lower rate; the compulsion being that if the low rate is retained, the rate applicable to the locality or article discriminated against must be reduced."

It was again so held in the recent case of *Texas & P. R. Co.* v. *United States*, 289 U. S. 627, 650, 77 L. ed. 1410, 1428, where this Court said:

> "Where an order is made under § 3 an alternative must be afforded. The offender or offenders may abate the discrimination by raising one rate, lowering the other, or altering both."

In the present case no alternative is afforded appellant because *it must publish the reduced general yardage rates* even though it may be unable to obtain a penny of increase from the feed lot yardage.

The order, as stated, prescribes *maxima* rates for yardage and merely authorizes appellant to increase its feed lot charges if it can do so. As a matter of law, if there were of record facts to justify a finding of discrimination, which we deny, the order must necessarily afford appellant an oppor-

tunity to abate the discrimination by increasing one yardage rate, lowering the other, or altering both. Since appellant is denied this right by the Secretary's order, the order is void, because beyond the statutory power of the Secretary.

For the several reasons here presented (1) the lack of findings in the decision; (2) no hearing in any true sense; (3) lack of evidence to support the conclusions stated; (4) because no alternative was afforded to appellant as to removal of the stated discrimination; the decision of the Secretary is void in so far as it deals with the question of feed lot charges. Without the estimate there made of increased revenue to appellant, the remainder of the order in so far as it reduces general yardage and feed charges is obviously void because confiscatory.

XI.

THE DISTRICT COURT ERRED IN FAILING TO FIND THAT THE VALUE OF THE TRANSIT HOUSE SHOULD BE INCLUDED IN THE VALUE OF APPELLANT'S PROPERTY USED AND USEFUL FOR STOCKYARDS PURPOSES.

This point is no. 3 of our statement of points to be relied upon and is based upon assignment of error nos. 6-14, inclusive. As to it appellant sought appropriate findings of fact in its petition for supplemental findings of fact. (R. 142).

In his first decision in this case (par. 64, appendix to brief, p. 34), the Secretary included the Transit House as a part of appellant's property used and useful for stockyards purposes. In the second decision (par. 84, R. 67), the Secretary excluded the value of the Transit House and the land upon which it stands as not used and useful for stockyards purposes.

No change in conditions since first decision. In his first decision, the Secretary found that this property was used and useful. We quote the finding upon that point from paragraph 64 (appendix to brief, p. 34) of the first decision:

> "The building known as the Transit House was erected some years ago and at a time when passenger transportation facilities between South St. Joseph and the hotel area of St. Joseph were not so good as they now are. It appears to have been suited to the then conditions. Since that time patronage has declined and now it is leased to an operator for $100 per month under a contract whereby the operator's books are open to respondent's inspection, and, if the revenues of the hotel business warrant, respondent may increase the rental. The rental so paid falls far short of yielding a fair return upon the fair value of this property, if its fair value be taken to be the cost of reproduction new less depreciation, to say nothing of its proportion of general overheads. Its chief present patronage is by those who drive trucks in which livestock is brought to the stockyards. These are not usually the owners of the livestock but persons engaged in the conduct of public trucking businesses. They come to the stockyard mostly late at night and it is necessary for them to find a place to sleep. They are prohibited by law from parking their trucks in the streets of St. Joseph. Apparently they are unable to or will not pay for the accommodation they receive rates adequate to yield a fair return upon the fair value of the property. They would be satisfied with less costly accommodations were such available. Respondent contends that having this accommodation for the truck drivers tends to induce them to come to its stockyard rather than some other; that the maintenance of this facility is advantageous to the shipper of the livestock, and therefore, that it should be included among the used and useful property. *The hotel, including the* 15,805 *square feet of land which it occupies, is found to be used and useful in the rendition of the services for which are charged the rates the reasonableness of which is determined by this order.*" (Emphasis ours).

At the second hearing Mr. Christensen testified on

behalf of the Government as to used and useful property. The following (R. 418) is his testimony in the second hearing respecting the Transit House:

> "The use of the Transit House is substantially the same as it was in 1929. • • • The Secretary in his prior decision allowed the Transit House as used and useful."

Appellant called as a witness C. F. Topping, its president and general manager, and the following is taken from his testimony on the second hearing (R. 823):

> "The situation is practically the same now as at the time of the previous hearing. I heard the statement of Mr. Christensen that the patrons are chiefly commercial truckers. I investigated this statement and discovered that for the month of November, 1932, I found that 51.6 per cent of the total registrations were actual shippers, and for the month of December the percentage of actual shippers was 68.6 per cent, and for the month of January, 1933, the percentage of actual shippers was 56.6. In my opinion the need for the maintenance of the Transit House by the management of respondent has continued. • • • There has been no change in circumstances and conditions respecting the use of the Transit House since the prior hearing that would have any bearing whatsoever upon the change of classification from used and useful to non-used and useful."

In its decision, 11 F. Supp. at page 328, *the District Court failed to note that the Secretary had, in his first decision, found the Transit House and the necessary land to be used and useful for stockyards purposes.*

The Transit House is just as necessary as it was at any time and even more so since so much of the live stock is arriving by truck. It is immediately adjacent to the stockyards, the truckers arrive during all hours of the late night and early morning, and the Transit House affords them a convenient and cheap place to sleep or rest within a few feet of the place where their trucks are unloaded. Un-

fortunately, the part of St. Joseph lying between the stockyards and the central portion of the city has many resorts which would be unsuitable as resting places for the persons who bring or forward their live stock to the yards. They are prohibited by law from parking their trucks in the streets of St. Joseph, and they are not able to walk to the city in the middle of the night.

It is *used*. It cannot be denied that it is *useful*. The first decision of the Secretary was in accordance with the record. The testimony on behalf of the Secretary at the second hearing showed that conditions respecting the Transit House were unchanged.

Exclusion of Transit House is confiscatory. The exclusion of this property amounts to confiscation to the extent of its value. The total value of the Transit House and of the land upon which it is located, as determined by the Government witness, is to be found in Government exhibit 114 as to structures and in paragraph 118 of the present decision (R. 86), zone 1, as to land. Using those two values, the value of the Transit House and the land is $120,143. The Secretary has held that a fair return is 7 per cent, and that percentage applied to the value just given amounts to $8,410 per annum of which appellant is deprived by the decision of the Secretary and the District Court.

The decision of the Secretary in substance abolishes this property and confiscates it in a very real sense. As was said by the District Court in *Denver Union Stock Yard Co. v. United States*, 57 F. (2d) 735, at page 746:

> "By denying the petitioner a right to earn a return thereon, the Secretary has, as a practical matter, denied the petitioner the right to own them, for it is mathematically certain that, if the petitioner is not permitted to earn a return upon the value of such properties, it cannot afford to keep them. Some one must pay the taxes on these properties, and some one must pay a return upon the investment therein."

Operation of the Transit House is clearly a matter within the business judgment of appellant's management.

As was said in the same decision, at page 748:

> "This is essentially a matter of business management which may not be arbitrarily interfered with. There is nothing in the outlay to suggest dishonest, wasteful, or imprudent expenditure. The right of a public utility corporation honestly and in good faith to carry on its business and direct its affairs must not be wrested from it under the guise of rate making."

In so holding, the District Court was doing no more than to affirm the prior decisions of this Court.

In *Missouri ex rel. S. W. Bell T. Co.* v. *Public Serv. Com.*, 262 U. S. 276, 288, 67 L. ed. 981, 985, this Court said with respect to an amount disallowed as operating expenses of the utility there involved:

> "There is nothing to indicate bad faith. So far as appears, plaintiff in error's board of directors has exercised a proper discretion about this matter requiring business judgment. It must never be forgotten that while the state may regulate, with a view to enforcing reasonable rates and charges, it is not the owner of the property of public utility companies, and is not clothed with the general power of management incident to ownership. The applicable general rule is well expressed in *State Public Utilities Commission ex rel. Springfield* v. *Springfield Gas & E. Co.*, 291 Ill. 209, 234, P. U. R. 1920 C, 640, 125 N. E. 891:
>
> > 'The commission is not the financial manager of the corporation, and it is not empowered to substitute its judgment for that of the directors of the corporation, *nor can it ignore items charged by the utility as operating expenses unless there is an abuse of discretion in that regard by the corporate officers.*' " (Emphasis ours).

To the same effect are the following decisions in the lower federal courts:

Mobile Gas Co. v. *Patterson*, 293 Fed. 208, 226.

Consolidated Gas Co. of New York v. *Newton*, 267 Fed. 231, 255.

Northwestern Bell Telephone Co. v. *Spillman*, 6 F. (2d) 663, 665.

Citizens' Gas Co. v. *Public Service Commission*, 8 F. (2d) 632, 634.

Pacific Telephone & Telegraph Co. v. *Whitcomb*, 12 F. (2d) 279, 285.

Brooklyn Borough Gas Co. v. *Prendergast*, 16 F. (2d) 615, 623.

Denver Union Stock Yards Co. v. *United States*, 57 F. (2d) 735, 753.

It is respectfully submitted that the decision of the District Court with respect to the exclusion of the Transit House and the necessary land is (1) unsupported by and contrary to the evidence of record; (2) arbitrary; (3) confiscatory of appellant's property in violation of the fifth amendment to the Constitution; and (4) an invasion of the power of management incident to ownership, not authorized by the statute.

XII.

THE DISTRICT COURT ERRED IN FAILING TO FIND THAT APPELLANT'S PROPERTY, USED AND USEFUL FOR STOCKYARDS PURPOSES, HAS A SUBSTANTIAL GOING CONCERN VALUE, IN ADDITION TO THE BARE VALUE OF THE LAND AND STRUCTURES.

This is covered by point no. 6 of our points to be relied upon and assignments of error nos. 20-24, inclusive. Specific findings were asked of the District Court in appellant's petition for supplemental findings of fact, paragraphs 7-9 (R. 143).

The leading decisions of this Court upon this subject are listed below:

Knoxville v. *Knoxville Water Co.*, 212 U. S. 1, 53 L. ed. 371.

Omaha v. *Omaha Water Co.*, 218 U. S. 180, 54 L. ed. 991.

Des Moines Gas Co. v. *Des Moines*, 238 U. S. 153, 59 L. ed. 1244.

Denver v. *Denver Union Water Co.*, 246 U. S. 178, 62 L. ed. 649.

Lincoln Gas & E. L. Co. v. *Lincoln*, 250 U. S. 256, 63 L. ed. 968.

Galveston Electric Co. v. *Galveston*, 258 U. S. 388, 66 L. ed. 678.

Bluefield W. W. & Improv. Co. v. *Public Service Com.*, 262 U. S. 679, 67 L. ed. 1176.

McCardle v. *Indianapolis Water Co.*, 272 U. S. 400, 71 L. ed. 316.

Los Angeles G. & E. Corp. v. *Railroad Com.*, 289 U. S. 287, 77 L. ed. 1180.

Dayton P. & L. Co. v. *Public Utilities Commission*, 292 U. S. 290, 78 L. ed. 1267.

Columbus Gas & Fuel Co. v. *Public Util. Com.*, 292 U. S. 398, 78 L. ed. 1327.

The oft-repeated declaration of this Court as to going concern value is found in *Los Angeles G. & E. Corp.* v. *Railroad Com., supra*, 289 U. S. at page 313, 77 L. ed. at page 1196, and is as follows:

> "This court has declared it to be self-evident 'that there is an element of value in an assembled and established plant, doing business and earning money, over one not thus advanced,' and that this element of value is 'a property right' which should be considered 'in determining the value of the property upon which the owner has a right to make a fair return.' "

The same principle has been followed in many decisions of the lower federal courts and in the highest courts of the states. Amongst those which may be cited in the lower federal courts are the following:

Spring Val. Waterworks v. *City, etc., of San Francisco*, 124 Fed. 574.

Missouri, K. & T. Ry. Co. v. *Love,* 177 Fed. 493.
Des Moines Water Co. v. *City of Des Moines,* 192 Fed. 193.
C. H. Venner Co. v. *Urbana Waterworks,* 174 Fed. 348.
Des Moines Gas Co. v. *City of Des Moines,* 199 Fed. 204.
Goldfield Consol. Water Co. v. *Public Service Com'n.,* 236 Fed. 979.
Pacific G. & E. Co. v. *City and County of San Francisco,* 273 Fed. 937.
City of Minneapolis v. *Rand,* 285 Fed. 818.
Mobile Gas Co. v. *Patterson,* 293 Fed. 208.
Streator Aqueduct Co. v. *Smith,* 295 Fed. 385.
Westinghouse Electric & Mfg. Co. v. *Denver Tramway Co.,* 3 F. (2d) 285.
Southern Bell Tel. & Tel. Co. v. *Railroad Com'n of S. C.,* 5 F. (2d) 77.
Consolidated Gas Co. of New York v. *Prendergast,* 6 F. (2d) 243.
Kings County Lighting Co. v *Prendergast,* 7 F. (2d) 192.
Brooklyn Union Gas Co. v. *Prendergast,* 7 F. (2d) 628.
Citizens' Gas Co. v. *Public Service Commission,* 8 F. (2d) 632.
New York & Richmond Gas Co. v. *Prendergast,* 10 F. (2d) 167.
Middlesex Water Co. v. *Board of Public Utility Com'rs.,* 10 F. (2d) 519.
Monroe Gaslight & Fuel Co. v. *Michigan Public Utilities Com'n.,* 11 F. (2d) 319.
Pacific Telephone & Telegraph Co. v. *Whitcomb,* 12 F. (2d) 279.
United Fuel Gas Co. v. *Public Service Commission,* 14 F. (2d) 209.

Brooklyn Borough Gas Co. v. *Prendergast,* 16 F. (2d) 615.

Columbus Gas & Fuel Co. v. *City of Columbus,* 17 F. (2d) 630.

Idaho Power Co. v. *Thompson,* 19 F. (2d) 547.

Kansas City Southern Ry. Co. v. *United States,* 19 F. (2d) 591.

Board of Public Utility Com'rs. v. *Elizabethtown Water Co.,* 43 F. (2d) 478.

Denver Union Stock Yard Co. v. *United States,* 57 F. (2d) 735.

St. Joseph Stock Yards Co. v. *United States,* 58 F. (2d) 290 (footnote, p. 295).

International Ry. Co. v. *Prendergast,* 1 F. Supp. 623.

Wichita Gas Co. v. *Public Service Commission,* 2 F. Supp. 792.

Wichita Gas Co. v. *Public Service Commission,* 3 F. Supp. 722.

Pacific Gas & Electric Co. v. *Railroad Commission,* 5 F. Supp. 878.

FACTS RELATING TO APPELLANT'S GOING CONCERN VALUE.

In the first decision of the Secretary in this case (pars. 92-96, inc., appendix to brief, pp. 46-50), the Secretary found that appellant had at that time a going concern value of $300,000. *This fact is not mentioned in the second decision of the Secretary or in the decision of the District Court,* 11 F. Supp. 322, in the discussion at pages 334-335, under the title "(6) Exclusion of going concern value."

In the present decision, *with no change in conditions except a somewhat lower valuation of land and structures than that made in the first decision,* the Secretary excludes any allowance for going concern value. This exclusion by the Secretary, and the approval thereof by the District

Court, is alleged by appellant to be contrary to the evidence, arbitrary, confiscatory, and to result in making the order void.

Value fixed by Secretary in second decision includes nothing more than bare bones of the property. In *Los Angeles G. & E. Corp.* v. *Railroad Com., supra,* this court said (289 U. S. at pp. 313, 314, 77 L. ed. at p. 1197):

> "The concept of going value is not to be used to escape the just exercise of the regulatory power in fixing rates, and, *on the other hand, that authority is not entitled to treat a living organism as nothing more than bare bones.*" (Emphasis ours.)

It is readily demonstrable in this case that the Secretary allowed nothing more than the bare bones of the property. The Secretary was plainly in error in the statement (par. 160, R. 112):

> "Thus, in the rate base herein found, there is included a large amount for going-concern value * * *."

The values determined by the Secretary are those set up by the Government engineer, Mr. Henrici, in Government exhibit 114 (R. 424). Mr. Henrici appraised the value of all of appellant's structures. From this value, the Secretary deducted the values found by Mr. Henrici for certain structures which the Secretary declared were not used and useful. The cost of reproduction new for labor and materials only are shown at the end of paragraph 126 of the present decision (R. 92). To such labor and material costs are to be added the construction overheads set forth in paragraph 136 of the present decision (R. 99). The total value determined by the Secretary is merely the addition of the depreciated value of structures, land value, and working capital. (See par. 161 of decision, R. 112, 113).

To this cost of reproduction new, the Secretary applied a percentage of 76.04 to obtain the cost of reproduction new less depreciation of $2,039,616 appearing in paragraph

148 (R. 106) of the decision. This percentage was likewise the percentage taken from the testimony of Mr. Henrici, the Government engineer, as applied to the structures which the Secretary found to be used and useful.

We now turn to the record for the purpose of demonstrating that this appraisal made by the Government engineer covered nothing more than "the bare bones of the structures" *with such overheads as would necessarily be incurred in connection with the construction.* It included no item which would accrue because of the effort, time, and money spent for the purpose of establishing and attaching the business or which represents the value of a "plant, doing business and earning money, over one not thus advanced." The quotations given below are from the testimony of Mr. Henrici, the Government Engineer, as they appear in the abstract of the record of the rehearing at St. Joseph, Mo., January 10 to February 16, 1933.

> *"The general methods of appraising the property were the same I used in making the original appraisal* which is Government Exhibit Nos. 4-E to 4-I, inclusive, *and as described in the abstract of record of my testimony in the former hearing."* (R. 422.)
>
> "To the *bare cost of material and labor* I added certain percentages which are known as *construction overheads.* These are the overheads which would commonly be incurred by a contractor in building a property. To the total of material and labor plus construction overheads I added an item of 5 per cent for contingencies and omissions and obtained a total. To this total was added for architects' and engineers' fee 5 per cent, legal expenses 1 per cent, general salaries and expenses during construction 2 per cent, liability insurance 6.1 per cent of the labor only, fire insurance ½ per cent; the actual taxes paid during 1932 for the year 1932, interest during construction at the rate of 7 per cent for 6 months, being half of the construction period. This gave a total to which were added additions and betterments from 1927 to 1932. That gave a final total, exclusive of land." (R. 426)

"One of the things that omissions and contingencies are to cover is things omitted from the inventory in spite of care." (R. 426)

"Contingencies are akin to omissions in that they cover the general error that creeps into estimates which have not been taken care of altogether in the estimates."

"Those are the things that are ordinarily contained in contingencies."

"This 5 per cent comes from my own experience in rechecking inventories." (R. 427)

"The general overheads stated in Government Exhibit No. 114 are the same type of overheads used in my appraisals of 1927 and 1929." (R. 428)

"My appraisal is not a valuation based on a trend in prices, or average prices, prevailing over a period of years. My appraisal was made by investigation of prices current at the time the appraisal was made. It represents my opinion of the fair and true cost of reproducing this property as of August 1, 1932." (R. 435)

"My overheads do not include any going concern value separately set out."

"There is not any specific item in my appraisal which covers going concern value." (R. 436)

"I stated that I made no separate and distinct allowance in my appraisal for going concern value. It is possible that an article of property could have a cost which might be either greater or less than its value. Cost and value are not necessarily synonyms. In my appraisal I was technically seeking to obtain costs. *My figures attempt to set up my opinion of the value of reproduction cost of property and the reproduction cost less depreciation. I do not attempt to set up market value for the property."* (R. 439)

"There is no difference in the mechanical operation of finding the cost of reproduction new of a property that has a business and the identical property that has no business. The same is true of cost of reproduction less depreciation. I followed the same methods and principles in this appraisal as I followed in my 1929 appraisal." (R. 440) (Emphasis ours)

The sum total of these items, according to the testimony of Mr. Henrici, is set up in exactly the same manner as in the appraisal considered in the first decision, in which the Secretary found that appellant had, in addition to the value represented by the mere construction costs less depreciation, plus the value of land, a going concern value of $300,000. As stated by Mr. Henrici, his overheads did not include any going concern value. There is no specific item in his appraisal which covers going concern value. Mr. Henrici stated specifically that there was no difference between his method of finding cost of reproduction new, and less depreciation, of a property "that has a business and the identical property that has no business." Mr. Henrici's values were adopted by the Secretary.

No additional allowance of 15 per cent or any other to cover going concern value was allowed in this case as in the case of *Des Moines Gas Co.* v. *Des Moines,* 238 U. S. 153, 59 L. ed. 1244.

The same thing is true of land. In the first decision (par. 73, appendix to brief, p. 38), the Secretary stated that the land appraisers, in the values placed upon zone A, the largest and most valuable of appellant's land, had included certain elements of going concern value, wherefore the Secretary reduced the value stated by the appraisers to 25 cents per square foot, thereby eliminating going concern value. In the present decision (par. 110, R. 83), the Secretary reduced the value of that land to 16 cents per square foot, a reduction of 36 per cent from the former value. Certainly it could not be contended that any element of going concern value was included in the land.

Thus the Secretary, contrary to the decision of this Court in *Los Angeles G. & E. Corp.* v. *Railroad Com., supra,* has treated "a living organism as nothing more than bare bones."

The statement in paragraph 160 of the decision (R. 112) that "in the rate base herein found, there is included a large amount for going-concern value" finds no confirmation in the record; is directly contrary to the evidence of witness Henrici, whose appraisal the Secretary adopted; is contrary to the "indisputable character of the evidence", and therefore void.

The District Court erred in its statement that "the only evidence as to this element of value was by witness Howson (for petitioner);" 11 F. Supp. at page 335. The Secretary made a similar error (par. 153, R. 107) in this statement: "Respondent's claim in this respect is based entirely upon the testimony of the witness Howson * * *." There is twofold proof of this error on the part of the Secretary and of the District Court.

1. Following the first decision of the Secretary, appellant filed a petition in the District Court of the United States for the Western District of Missouri, St. Joseph Division, which resulted in the decision in *St. Joseph Stock Yards Co.* v. *United States,* 58 F. (2d) 290. In said petition, appellant made a specific allegation concerning the allowance for going concern value. We have copied that allegation at page 67 of the appendix to the brief. There was a specific answer to that allegation by the United States and the Secretary which is also printed at page 68 of the appendix, admitting that the Secretary had allowed $300,000 for going concern value. The answer continued "but *deny that no evidence with respect to the going-concern value of petitioner's property was offered on behalf of said Secretary at the hearing described in said petition; and allege that much evidence tending to show the going concern value of petitioner's property and business was introduced on behalf of said Secretary at said hearing.* Defendants further deny that the only evidence offered at said

hearing with respect to the going concern value of petitioner's property was that offered on behalf of petitioner." (Emphasis ours.)

By the order reopening this case for the second hearing it was specifically provided (R. 396) that the record heretofore made in this docket, together with all the evidence at said hearing, should constitute the record before the Secretary of Agriculture in this proceeding. Consequently, all the evidence concerning going concern value alleged by appellees to be in the record before the Secretary on the first hearing was before the Secretary on the second hearing. All of that evidence is now before this Court, the evidence on the first hearing covering pages 183-393 of the record. Consequently, it is plainly error for the Secretary to state in the second decision, and for the District Court to find in its opinion, that the only evidence as to this element of value was by witness Howson for petitioner (appellant).

2. The first stockyards was opened at South St. Joseph on December 1, 1887 (R. 637). It was somewhat changed in location and substantially enlarged by the present company between 1898 and 1900 and continued its growth since that time (R. 626). It was placed between Omaha and Kansas City, where there were already much larger and older stockyards. It had to enter into determined competition for its business and to continue that competition throughout its existence.

A glance at the map will show that shippers of live stock at any substantial distance west of the Missouri River can with equal facility send their consignments to Sioux City, Omaha, Kansas City, or St. Joseph. If such shippers think there are better prospects farther to the east, they can and do, in tremendous volume, forward their shipments through the Missouri

River cities on to the terminal live stock markets at Chicago, the largest live stock market in the country, or to East St. Louis. Thus, the market at St. Joseph must compete for receipts not only with the other live stock markets on the Missouri River but also with the more easterly markets, such as Chicago and East St. Louis.

Added to such competition, in recent years there has been a tremendous increase in the practice known as direct marketing; that is, the buying of live stock by packers or other purchasers at country points or on farms or ranches. Mr. C. F. Topping, appellant's president, testified to this effect (R. 825). Mr. Topping pointed out that the packers are now buying from the producers at small concentration points or yards and that this buying diverts live stock which might otherwise come to the St. Joseph market; that his company feels the competition of this direct buying and that it is coming closer to St. Joseph. Consequently, this live stock market must meet the competition not only of other large live stock markets but also the competition which has arisen from the practice of direct purchases of live stock from the country station, farm, or ranch.

In another manner the evidence also shows the highly competitive conditions which have to be met by appellant. The record shows that 40 per cent of the live stock receipts at the St. Joseph market come from a distance within a radius of 100 miles from St. Joseph; 25 per cent from a distance within 100 to 350 miles from St. Joseph; and 35 per cent from beyond 350 miles from St. Joseph (R. 281, 377). This indicates that 60 per cent of the receipts at St. Joseph come from highly competitive territory, for any shipper beyond 100 miles of St. Joseph may readily select four or five other major markets as the destination of his live stock, as well as any of the country buying points.

In addition to this evidence, Government exhibit 111, from which receipts have been quoted above, indicates that it took 30 years to bring cattle receipts from 39,244 head in 1893 to 607,829 head in 1923; the same amount of time to bring the hog receipts from 240,160 head in 1893 to 2,456,962 head in 1923; and 36 years to bring the sheep receipts from 26,230 head in 1893 to 1,635,607 head in 1929. Thus, the record definitely proves that there is here no monopoly of business, a point frequently mentioned in connection with public utility rate cases dealing with telephone, electric light, gas, and now to a lesser degree street railway services. This case presents an outstanding example of an industry which has attached a business, under highly competitive conditions, by efforts continued over a period of 30 to 36 years. The entire record negatives the suggestion that the burden of building up the patronage may have been negligible because of little competition with other markets.

The evidence to which we have called attention was offered at the first hearing. *Thus, both by the answer of the Secretary in the earlier litigation and by the record itself, we have demonstrated that there was substantial evidence relating to going concern value.* Of course, there was much other evidence, all of which cannot be summarized at this point.

The District Court erred in finding that certain elements of going concern value were included in the appraisal. In its discussion of this point (11 F. Supp. at page 335), the District Court said:

> "Moreover, at least some of the elements considered by Howson seem to have been included in the valuation by the Secretary (see finding 136, which includes such items as interest during construction ($125,106) and taxes during construction ($18,257); possibly, also, insurance during construction ($10,618, $46, and $485))."

This statement is plainly erroneous as to the elements considered by Howson.

As we understand going concern value, these costs incurred during construction are not a part of it. Going concern value represents the difference between the value of a plant that has been *completed,* but has *no business attached,* and a similar plant that has been operated for a number of years and has an attached business. This is the definition given by the Secretary in paragraph 159 of the present decision (R. 111) and quoted by the District Court. The testimony heretofore quoted from Mr. Henrici, the Government engineer, definitely shows that *the overheads to which the District Court adverts were merely such overheads as would be incurred during construction and such costs would necessarily have been paid at the time when the plant was completed and ready to do business.* In the quoted portion of Mr. Henrici's testimony they are said to be the same overheads used in his earlier appraisal at the first hearing and in connection with which the Secretary found that appellant had a going concern value of $300,000.

The District Court erred in its apparent approval (11 *F. Supp. at page* 334) *of the following statement taken from paragraph* 159 (*R.* 111) *of the decision*:

> "In actuality, going-concern value is conceived to be the difference between the present fair value of the physical properties of a business, plus its working capital, and its actual net earnings capitalized at the going rate of money. The use of such a measure in rate proceedings would have the effect of destroying the result of the elaborate procedure which is undertaken to avoid using capitalized income as a basis for determination of the reasonableness of that income. *This is why a separate allowance for the element of going concern has no place in valuation for rate making purposes.*" (Emphasis ours).

This reasoning cannot be applied to a public utility whose value is fixed by determining the current value of the land and cost of reproduction new less depreciation of the structures, plus working capital. It could only apply if a business were in a position to capitalize uncontrolled earnings. This point should be very obvious.

This mental concept of going concern value does not depend upon capitalizing income to determine the value of the plant. On the contrary, it depends only upon fixing the value of the plant in the customary way, by competent appraisals, and then attempting in some fair way to determine the difference in value between the plant with the fairly assured income and the plant which [illegible] as before it the necessity of gaining a business which would fairly demand the capacity of the plant. Such a method of determining going concern value would not have "the effect of destroying the result of the elaborate procedure which is undertaken to avoid using capitalized income as a basis for determination of the reasonableness of that income." No such difficulty can possibly arise where both the value and the fair rate of return are determined without capitalizing income in any respect.

The difficulty involved in appraising going concern value does not excuse the regulatory authority from making a proper allowance. We submit that the Secretary and the District Court alike erred in the apparent conclusion that going concern value could be disallowed because of the difficulty of determining the amount. (See first sentence, third paragraph of decision of District Court, 11 F. Supp., 322, at page 334.) The difficulty is perhaps no greater than that which faces the average jury in a personal injury case and yet the jury reaches a verdict. A jury could not be heard to say that it would award no damages in a proper case merely because of difficulty in determining the proper

amount. This point has been discussed in a number of decisions of the lower federal courts. We here refer to merely a few of them.

"In the absence of demonstration through an actual purchase and sale transaction, under fair conditions, its ascertainment must be a matter of competent business judgment as to what a purchaser would be willing to pay for such elements and properties, rather than undergo the costs of acquiring them anew. It is the common necessity and practice, in the business world, to make estimates of the present worth of intangible properties which are no less difficult than any estimate in this case. The courts often have to make such ascertainments, as best they can, from all of the evidence, when dispute arises." *New York & Richmond Gas Co.* v. *Prendergast,* 10 F. (2d) 167, 179.

"This additional value, over and above the fair and reasonable value of the physical properties plus the working capital, which a customer would pay for the property because it is a going concern and which additional value we call 'going value,' does not depend upon past losses in operations, successfully survived, or in expenditures, wise or unwise, during development. There may be such a thing as expenditures wisely made, contributing to 'going value,' but they are not the measure of the amount of 'going value.'" *Pacific Telephone & Telegraph Co.* v. *Whitcomb,* 12 F. (2d) 279, 284.

"There may be businesses in which it is possible to compute with some degree of accuracy this element of value; but, even if accurate computation is not possible, *a value which actually exists should not be ignored because of the difficulty of its measurement.* There is no rule by which the value of a leg or an arm can be accurately measured in dollars and cents, nor by which pain and suffering can be computed; yet triers of fact do evaluate such things. *By the same token, difficulty of measurement should not amount to a denial of right." Denver Union Stock Yard Co. v. United States,* 57 F. (2d) 735, 744. (Emphasis ours)

"That such a value exists is acknowledged by all engineers and appraisers, and is a matter of common knowledge. *That allowance therefor cannot be denied*

because of difficulty in evaluation is settled by decisions of the Supreme Court of the United States and of the Supreme Court of Kansas.'' Wichita Gas Co. v. *Public Service Commission,* 2 F. Supp. 792, 806. (Emphasis ours)

The testimony of Mr. Howson for appellant, except as to the existence of going concern value, may be disregarded. The Secretary was not bound to accept the conclusion of an expert witness as to the amount, although it may be suggested here that Mr. Howson presented a rational method of determining an intangible value. But the Secretary, in his first decision (pars. 92-96, appendix to brief, pp. 46-50), *entirely discarded Howson's method of determining the amount of going concern value, yet upon other facts of record now before this court, found that appellant had a going concern value of* $300,000.

In the *Denver Stock Yard case,* docket No. 301 (see appendix to brief, pp. 69-71) *the Secretary discarded the Howson method of determining the amount of going concern value, but found that stockyards had a going concern value of* $295,000.

In the *Omaha Stock Yards case,* docket No. 344 (appendix to brief, pp. 72-74) *the Secretary completely discarded the evidence of the two experts, Heider and Howson, as to the amount of going concern value, but determined that stockyards had a going concern value of* $850,000.

In view of the unquestioned ability of the Secretary to determine the amount of going concern value in the Denver and Omaha cases; of his ability to determine appellant's going concern value upon the first hearing; and of the holding of the lower federal courts to the effect that the allowance cannot be denied because of difficulty of evalution; it follows that the Secretary and the District Court erred in holding that going concern value could be denied, amongst other reasons, because of the difficulty of determining the amount of such value.

The finding is arbitrary and, therefore, void. This Court will appreciate, without studying the decisions in the several cases here mentioned, that the business conducted at each of the major public stockyards is substantially similar and that the facilities used at these stockyards are substantially the same. If any substantiation of this statement is necessary, we need only refer to the decisions of the Secretary describing the stockyard operations and facilities in the cases cited below.

On July 28, 1931, the Secretary issued a decision and order in the proceeding known before him as B. A. I. docket No. 301, *Secretary of Agriculture* v. *Denver Union Stock Yard Company.* This is the decision which was before the District Court in *Denver Union Stock Yard Co.* v. *United States,* 57 F. (2d) 735. The appraisal of the property of the Denver Union Stock Yard was made by the same Government engineer, Mr. Henrici, and in the same manner as was the appraisal of appellant's property. In the *Denver case* the Secretary found that the Denver Union Stock Yard had a going value of $295,000 or approximately 10 per cent of the land and structural values. The decision of the Secretary upon this point appears at pages 69-71 of our appendix to this brief.

On July 20, 1931, the Secretary of Agriculture issued his first decision in this proceeding, which was before the district court in *St. Joseph Stock Yards Co.* v. *United States,* 58 F. (2d) 290. The Secretary there found that appellant's property had a going concern value of $300,000 (see first decision, pars. 92-96, appendix to brief, pp. 46-50). As indicated in the footnote at page 295 of the District Court decision, a majority of the court was of the opinion that the Secretary had made an insufficient allowance for going concern value.

On March 1, 1933, the Secretary of Agriculture issued his decision in the proceeding known as B. A. I. docket No.

344, *Secretary of Agriculture* v. *Union Stock Yards Company of Omaha, Ltd.* The valuation of the structures in that case was made by the same Government engineer, Mr. Henrici, using the same methods as he had used in the Denver and St. Joseph cases. The Secretary there found that the Omaha Stock Yards had a going concern value of $850,000 (appendix to brief, pp. 72-74). This is the case which was before the District Court in *Union Stock Yards Co. of Omaha* v. *United States,* 9 F. Supp. 864.

It is respectfully submitted that, in view of the findings heretofore made, the present finding of the Secretary to the effect that appellant's property has no going concern value, beyond the bare bones of the structures and land, is arbitrary in the legal sense. It will have been noted that in July, 1931, appellant's property had a going concern value of $300,000, while in May, 1934, according to the Secretary's decision, the property has no going concern value, although *it is the same property, engaged in the same business,* and *the Secretary finds that it has an attached business on which it is making an excessive total return.* There has been no change in the conditions with respect to this element of value since the first decision unless it may be that the amount might be reduced somewhat because of the lower value placed by the Secretary upon the property and the smaller net return prescribed. The items of property value were determined in exactly the same manner, although they are different in amount.

Appellant still has an established business. If it had a going concern value in 1931, as the Secretary found, it has not lost that going concern value in 1934. The finding of the Secretary in the second decision is directly contrary to the facts and evidence to which we have called attention. Under the decisions of this Court, it is void because (1) made without evidence; (2) contrary to the indisputable character of the evidence; (3) no facts or cir-

cumstances are shown to have intervened between 1931 and 1934 which would have resulted in elimination of the going concern value found by the Secretary to exist at the time of the first hearing; (4) arbitrary; (5) confiscatory; and (6) deprives appellant of its property rights under the fifth amendment.

THIS CASE IS READILY DISTINGUISHED FROM DAYTON P. & L. CO. V. PUBLIC UTILITIES COMMISSION, 292 U. S. 290, 78 L. ED. 1267, AND COLUMBUS GAS & FUEL CO. V. PUBLIC UTIL. COM., 292 U. S. 398, 78 L. ED. 1327.

We refer, first, to the decision of this Court in *Los Angeles G. & E. Corp.* v. *Railroad Com.*, 289 U. S. 287, 77 L. ed. 1180. We do not consider that decision as denying but, on the other hand, as affirming the right to an appropriate allowance for going concern value. As we read that decision, it amounts merely to holding that, while the California Commission had not tagged or earmarked a certain amount of money as *going concern value,* a substantial amount had been allowed which could be applied to that element.

We quote the following portion of that decision appearing at 289 U. S. 317, 77 L. ed. 1199:

> "As the historical cost of the far greater part of the fixed property appears to have been taken *at price levels which were higher than those which have obtained in the period to which the prescribed rates are applicable,* and cannot fairly be said to underestimate the value of the plant as of that period, *this excess amount of over* $5,500,000 *can appropriately be assigned to elements of value which may not have been fully covered.* The record affords no adequate basis for criticising the allowance made by the Commission for materials and supplies and working capital, *and thus the entire excess may be regarded as applicable to whatever intangible value the property had as a going concern. The fact that this margin in the rate base was not described as going value is unimportant, if the rate base was in fact large enough to embrace that element.* (Emphasis ours).

Unlike the Dayton Power & Light Company, appellant is not a new company. Appellant's predecessor opened its stockyards at this site in 1887. Appellant's business was slowly and laboriously built up under highly competitive conditions.

No allowance was made in the Secretary's decision for the cost of developing new business.

No allowance was made because of an appraisal of the physical assets as part of an assembled whole. (See *Columbus Gas & Fuel Co.* v. *Public Util. Com.*, 292 U. S. 398, at page 411, 78 L. ed. 1327, at page 1335.) The appraisal here would have been exactly the same if the properties had been in ten disconnected parts at ten different points.

We have demonstrated that the appraisal covered only the "bare bones of the plant" contrary to the decision in the *Los Angeles case.* Furthermore, the value of these "bare bones" was written down to a depreciated condition slightly less than that fixed by the Government engineer.

No historical cost higher than values current at the time of the hearing was allowed by the Secretary. *The property was valued at the bottom of the depression (as of 1932).*

The appraisal was made in exactly the same manner as in the Denver and Omaha cases and the first decision in this case.

The *Dayton Power & Light Company case* and the *Columbus Gas & Fuel Company case,* both of which came from Ohio, appear to have originated under statutes which prohibited an appraisal of going concern value. (See *Columbus Gas & Fuel Co.* v. *Public Utilities Commission,* 187 N. E. 7, at pages 13 and 14.)

We revert again to the comments on the subject of going concern value in the *Los Angeles case,* which we understand were not reversed by the later decisions in the *Day-*

ton Power & Light Company case and the *Columbus Gas & Fuel Company case.*

(1) Appellant is seeking no allowance for good will and made no effort to estimate any such value.

(2) Appellant is not attempting, under the guise of going concern value, to recoup any past losses or any losses during the period of its early development, or to balance any past deficits.

(3) The item is not being used "to escape the just exercise of the regulatory power in fixing rates."

(4) But, to borrow the language of this court in the *Los Angeles case,* we do contend that the regulating authority "is not entitled to treat a living organism as nothing more than bare bones."

Conclusion upon going concern value. Upon the trial of appellant's petition for an injunction against the first decision, the Secretary asserted that the record before him *contained much evidence offered by the Government witnesses upon which he was able to determine that appellant had a going concern value* of $300,000 (appendix to brief, p. 68). All of the same evidence was before the Secretary on the second decision; it was before the District Court; and it is now before this Court. In the present decision, the Secretary *omits to state that upon the first hearing he was able to determine the going concern value of appellant's business and had much evidence upon that point;* nor is that mentioned in the decision of the District Court. The decision upon the second hearing is simply a reversal of the first decision without any rational explanation and is, therefore, arbitrary.

The only difference which could be found between the facts of record upon the first decision and the present decision is because of the lower values determined by the Secretary and the lower net income prescribed. In the

first decision (par. 119, appendix to brief, p. 59), the Secretary held that appellant was entitled to an annual net operating income of $253,661. In the second decision, he holds it to be entitled to a net operating income of $192,010. As between the bare bones of a plant structure and a going business, it is quite possible that a buyer might pay more for the business with a permissible income of $253,661 than for one with a permissible income of $192,010. But such a consideration would involve only a reduction of the amount of going value in the second decision, not its elimination. In the first decision, the amount of going concern value determined by the Secretary was approximately 10 per cent of the other values, that is, land, structures, and working capital. Upon the same basis, under the second decision, the going value would be approximately $274,300.

It is respectfully submitted that the decision should be reversed because of the error of the District Court in failing to require a proper allowance for the element of going concern value.

XIII.

THE DISTRICT COURT ERRED IN FAILING TO FIND THAT THE COST OF REPRODUCTION NEW OF APPELLANT'S STRUCTURES, LESS DEPRECIATION, AS DETERMINED BY THE SECRETARY, WAS NOT SUPPORTED BY ANY LEGAL EVIDENCE.

This point is covered by no. 5 of the statement of points to be relied upon (R. 939); by assignments of error nos. 17, 18, and 19 (R. 153); and a finding thereon was requested in appellant's "petition for supplemental findings" (R. 143, 145).

The District Court seems not to have apprehended the point made by appellant in that court. The subject is discussed in one short paragraph on page 333 of the decision (11 F. Supp. 322) under the title "(4) Value of Struc-

tures." The District Court, after merely stating the percentage used by the Government, concludes:

> "Certainly this was a matter of judgment, and it is not clearly shown that the results reached by the Secretary are erroneous."

The point made in the District Court was that *there was no legal evidence to support the finding of the Secretary* that 76.04 per cent represented the depreciated value of the structures. Upon this point, the District Court failed to pass or make any finding. We quote the following from our argument upon this point at page 141 of our brief in the District Court:

> "The Government called no witness who had examined the property in order to determine the amount of existing depreciation, commonly reduced to a condition per cent. Henrici's testimony was only hearsay as we shall show."

Our argument upon that point concluded with this statement:

> "Clearly, there is no legal evidence to support the finding of the Secretary who adopts the condition percentage determined by Mr. Henrici and, therefore, the decision is void, this being one of the fundamental factors necessary to a decision."

Facts in connection with depreciated value. Mr. Hermann C. Henrici was the engineer employed by the Government, who made the appraisal of appellant's structures at both hearings before the Secretary. As stated in paragraph 125 of the present decision (R. 91), the Government engineer found that the cost of reproduction new of appellant's structures was $2,811,037. Following the estimated condition per cent stated by the Government engineer, Henrici, for the specific property included by the Secretary as used and useful, the Secretary determined that the depreciated value of appellant's used and useful structures was 76.04 per cent of the cost of reproduction new. (See deci-

sion, par. 145, R. 104.) Appellant's engineer, S. F. Kosters, reached the conclusion that the depreciated condition of the property gave it a value equivalent to 89 per cent of the cost of reproduction new. (R. 579-583, inclusive, and respondent's (appellant's) exhibits 111 and 111-a which are amongst the original exhibits certified to this court.) The condition per cent stated by appellant's engineer, Kosters, exceeded that found by the Government engineer, Henrici, by 12.96 per cent. The difference of 12.96 per cent on the total cost of reproduction new found by the Government engineer ($2,811,037) amounts to $364,310. A 7 per cent return on this amount is $25,501 per year. This amount cannot be considered *de minimis* in connection with a property of this size and value.

We repeat, as we stated in the District Court, that the Government called no witness who had examined the property in order to determine the amount of existing depreciation, to substantiate the condition per cent of 76.04 adopted by the Government engineer, Henrici, and in turn adopted by the Secretary.

The condition percentage used by the Government engineer, Henrici, was the mathematical average of percentages of five of his assistants, *none of whom were produced as witnesses* (R. 428, 429). On direct examination, Henrici made the following statement:

> "Each of these engineers put down on paper his conception of the proper percentage condition of that property and this is shown in Government Exhibit No. 114 under columns headed 1, 2, 3, 4 and 5. The numbers refer to my engineers Cushing, Galbreath, Johnson, Schramm and McClintock. The column headed 'Average' is a mathematical average of the five estimates. These estimates were made independent of each other. One man did not know what the other percentages were until he compiled his report." (R. 428.)

On cross-examination, Henrici stated:

"The names of the engineers who are enumerated

> in Government Exhibit No. 114, in the rear portion of the exhibit under the heading 'Condition Per Cent' and in the five columns headed 1, 2, 3, 4, and 5, respectively are: 1, J. E. Johnson; 2, W. O. Galbreath; 3, A. T. Cushing; 4, A. F. Schramm; 5, H. E. McClintock. The figures used in arriving at cost of reproduction less depreciation are the figures contained in the last column under the heading 'Av.' They are the mathematical average of the five preceding columns. The instructions given these five men were as follows: I gave them a list of the buildings, a blank list, and told them to observe what the percentage condition of each building was, not to talk with any of the other four men nor to show the results of their work until they were all done, and I had tabulated the results. No further instructions were given." (R. 437.)

The record contains no syllable of evidence as to the qualifications of these men. Not one of these men, who actually determined the existing depreciation upon which the Secretary based his finding, was called as a witness.

To determine such an important item upon mere hearsay evidence, based upon the average condition found by five men who were not called as witnesses, violates even the rather loose rules as to admission of evidence by regulatory tribunals.

Passing upon a somewhat similar question in *Interstate Commerce Com.* v. *Louisville & N. R. Co.*, 227 U. S. 88, 93, 57 L. ed. 431, 434, this court said:

> "But the more liberal the practice in admitting testimony, the more imperative the obligation to preserve the essential rules of evidence by which rights are asserted or defended."

The same point was reaffirmed in *United States* v. *Abilene & S. R. Co.*, 265 U. S. 274, 288, 68 L. ed. 1016, 1023.

The exact point was well stated in the decision in *Greencastle Water Works Co.* v. *Public Service Commission*, 31 F. (2d) 600, at page 605:

> "Neither this court, nor the defendant Commission, can determine the fair value of the property of plain-

> tiff, unless such value is based upon legal evidence. In other words, the judgment of a court or the order of a Commission cannot be sustained unless the finding of such court or Commission, upon which such judgment or order is based, is supported by legal evidence which will justify such finding."

It must be apparent that *the District Court failed to pass upon the point made by appellant, namely, that there was no legal evidence to support the depreciated value stated by the Government engineer;* and that, in this condition of the record, it was necessary to adopt the only other evidence upon this point which was that of appellant's engineer.

For the reasons stated, the finding as to depreciated value in paragraph 145 of the Secretary's decision (R. 104) is (1) without any support in the legal evidence; (2) contrary to the only competent evidence; (3) confiscatory; and (4) void.

XIV.

THE DISTRICT COURT ERRED IN FAILING TO FIND THAT THE ANNUAL ALLOWANCE FOR A DEPRECIATION RESERVE FIXED BY THE SECRETARY WAS INADEQUATE, CONTRARY TO THE EVIDENCE, BEYOND THE STATUTORY POWERS OF THE SECRETARY, CONFISCATORY, AND VOID; AND IN FAILING TO EXERCISE ITS INDEPENDENT JUDGMENT UPON THE LAW AND THE FACTS.

This no. 7 of our statement of points to be relied upon (R. 939-940), which in turn refers to assignments of error nos. 25-50 (R. 154-157). Appropriate findings by the District Court were requested in paragraphs 11-13 of appellant's "petition for supplemental findings of fact" (R. 143).

It is alleged in appellant's petition in the District Court, section IX (H) (R. 10), that the Secretary allowed only $41,500 per annum for a depreciation reserve; that the

amount which should reasonably be allowed for a depreciation reserve is not less than $100,000 per annum; that the findings in connection with this subject, contained in paragraphs 173-177, inclusive, of the Secretary's decision, are not supported by the evidence of record; that the Secretary is without authority to prescribe the amount of this depreciation reserve; that the findings of the Secretary are contrary to the evidence and to the weight of the evidence; arbitrary; confiscatory; and deprive appellant unlawfully of its property in the amount of $58,500 per annum, without due process of law, in violation of the fifth amendment. In paragraph 6 (h) of the answer of the United States and the Secretary of Agriculture (R. 134) the Secretary admits in substance that the amount allowed for an annual depreciation reserve is $41,500 and denies the other allegations of the petition.

This is an important item to appellant. This question was treated rather summarily by the District Court in the single paragraph devoted to the subject on page 335 of the decision (11 F. Supp. 322).

Before discussing the merits we call attention to an obvious error in the decision of the District Court.

Error in Opinion of District Court.

Referring to the evidence of the Government on depreciation reserve the following statement occurs (p. 335 of decision):

> "That of Government witness Bachmann shows great care to discover the elusive fact of what and where *there was depreciation not taken care of by repairs*, and he pursued his investigation in great detail." (Emphasis ours).

This statement is assigned as error in assignment of error no. 25 (R. 154). In proof of error, we can only make a negative statement, namely, that *witness Bachmann*

made no effort whatever to discover, compute or otherwise determine the amount of depreciation, stated in dollars or quantities or in any other way, not taken care of by repairs.

Mr. Bachmann was in charge of audits and accounts for the Government (R. 443). His testimony dealt only with the past accounting of the company. As supporting our statement that Mr. Bachmann made *no* such study as that stated by the District Court in the foregoing quotation, we refer to the testimony of Mr. Bachmann (R. 451-462; R. 466-472; R. 570-572; inc., R. 575-576). In this testimony of Mr. Bachmann, there is not a word, much less a study, concerning "the elusive fact of what and where there was depreciation not taken care of by repairs."

In the nature of things, Mr. Bachmann could not testify upon that subject. He was an accountant and was simply stating what was shown by the books.

In connection with his oral testimony there was offered in evidence by Mr. Bachmann, as relating to depreciation reserve, sheets 12-19, inclusive, of Government exhibit 124 (one of the original exhibits certified to this court). It will be noted there that Mr. Bachmann made no effort to determine *the amount of depreciation not taken care of by repairs* but did make an effort to determine what the amount of a depreciation allowance should be *if set up upon a sinking fund basis, the interest to be compounded semi-annually at 5 per cent per annum.* To determine the question stated by the District Court would have been an engineering problem. No such study was made by the Government engineer, Mr. Henrici, nor by any other witness on behalf of the Government.

We regret to state that said finding by the District Court is plainly a misapprehension of what was contained in the record. Apparently, however, it had a great weight in the conclusion reached by the District Court upon this subject.

FACTS RELATING TO DEPRECIATION RESERVE.

1. The discussion of this question in the Secretary's decision is contained in paragraphs 173-177, inclusive, (R. 117-118). The Secretary there finds that the average repairs on appellant's used and useful structures and equipment have been $38,500 per annum during the period 1922-1932. The Secretary then finds that $80,000 per annum (par. 177) is an adequate amount to be included in appellant's annual operating expenses "to cover repairs and provisions for depreciation reserve." Thus, the amount allowed annually for a depreciation reserve, as alleged in the petition and admitted in the answer, is $41,500 ($80,000 — $38.500 = $41,500).

2. In 1922, the American Appraisal Company made an appraisal of appellant's property and, in its report, suggested a basis for an annual depreciation reserve thereafter to be followed on a straight line basis (Secretary's decision, par. 174, R. 117). Appellant thereafter set up a depreciation reserve in accordance with said appraisal, as shown on page 15 of Government exhibit 124 (one of the original exhibits certified to this court). In 1932, the amount set aside for a depreciation reserve was $122,509.92 (R. 574). In the first decision (par. 110, appendix to brief, p. 55) the Secretary determined that $102,000 per year was an adequate allowance for repairs, maintenance, replacements, and a reserve for depreciation, of which $65,000 per annum was the amount allowed for a depreciation reserve. A majority of the District Court was of opinion that the allowance in the first decision "was upon the weight of the evidence too small." *St. Joseph Stock Yards Co.* v. *United States,* 58 F. (2d) 290; footnote, p. 295.

3. Upon the second hearing, appellant employed a competent and qualified engineer and statistical analyst to make a study of the question of depreciation reserve. He is Mr.

Henry J. Saunders, whose testimony upon the subject is to be found at pages 641-768 of the record. The exhibits offered in connection with Mr. Saunders' testimony are respondent's (appellant's) exhibits 116-130, inclusive, which are amongst the original exhibits certified to this court. Mr. Saunders came to the conclusion that the basis of life expectancy for certain of appellant's properties might be lengthened to the extent outlined in his testimony, thereby reducing the amount of the annual depreciation reserve to $100,000. Consequently, the issue comes to this: appellant is contending that the minimum proper allowance for a depreciation reserve is $100,000, while the Secretary has prescribed $41,500 or $58,500 per annum less than that considered by the appellant to be adequate. The sole question involved here is what will constitute a fair and reasonable annual allowance for depreciation *for the future.*

4. The Secretary finds that the cost of reproduction new of appellant's used and useful structures as of August 1, 1932, was $2,637,186 (par. 148 of decision, R. 105).

5. The composite average life of the property, as per Government exhibit 114 (R. 433-435), the witness being Government engineer Henrici, is 24.8 years, and *the annual depreciation, as estimated by Mr. Henrici in the same exhibit,* $113,492. If the structures determined by the Secretary to be not used and useful (par. 126 of decision, R. 92) are eliminated from said Government exhibit 114, *the amount of the annual depreciation as estimated by the Government engineer is reduced to* $108,795 *per annum.* According to Government exhibit 114, the average lives of the structures range from 15 years for pens and alleys through a number of different ages up to 50 years for certain sewer and water pipes.

6. Under the study by appellant's engineer Saunders,

the annual depreciation allowance of $100,000 would equal the cost of reproduction new of the structures in 26.37 years. Under the estimate made by the Government engineer, Mr. Henrici, the depreciation at the rate of $108,795 per annum would equal the cost of reconstruction new in 24.8 years.

The allowance made by the Secretary of $41,500 per annum for a depreciation reserve *would require 63 years to equal the cost of reproduction new, or more than twice the probable average life of the property as estimated by the Government engineer, and by appellant's engineer.* The allowance of $41,500 per year is at the rate of 1.6 per cent per annum of the cost of reproduction new as determined by the Secretary, whereas the Government engineer, in said exhibit 114 (R. 433-435; appendix to brief, p. 78) finds that the average annual rate of depreciation is 4.037 per cent per annum.

7. The annual rate of depreciation shown in Government exhibit 114, being $108,795 after deducting property found by the Secretary to be not used and useful, the allowance by the Secretary of $41,500 is less by $67,295 per year than the amount indicated as proper by the Government engineer.

8. The witness (Saunders, R. 641-768) who made a study for appellant determined upon an average depreciation in the property of 3.77 per cent per annum and recommended an annual reserve of $100,000 as necessary for this purpose at said annual rate; that is to say, the witness for appellant estimated the life of the property as being somewhat longer than the estimate made by the Government engineer and, consequently, the annual amount necessary for a depreciation reserve as being somewhat less than that indicated by Government exhibit 114.

9. The amount allowed by the Secretary for an annual

depreciation reserve, namely, $41,500, would have to earn a net return *after taxes of 7 per cent per annum continuously, such interest to be compounded annually.* in order to equal the cost of reproduction new ($2,637,186) during the life estimated by the Government engineer of approximately 25 years.

10. In his first decision in this case of July 20, 1931, the Secretary allowed $102,000 per annum for repairs, maintenance, replacements, and depreciation reserve (pars. 105-110, inc., appendix to brief, pp. 53-55). Of said amount of $102,000 per annum, $65,000 was the amount allowed for a depreciation reserve. In the present decision, the allowance of $41,500 is, therefore, $23,500 per year less than the allowance in the first decision; notwithstanding the fact that in *St. Joseph Stock Yards Co.* v. *United States,* 58 F. (2d) 290, footnote p. 295, a majority of the District Court expressed the opinion that this allowance of $102,000 "was upon the weight of the evidence too small."

11. In the first decision (par. 90, appendix to brief, p. 46) the Secretary found that the cost of reproduction new of appellant's used and useful structures was $2,850,735. In the present decision, the Secretary found that the cost of reproduction new of appellant's used and useful structures as of August 1, 1932, was $2,637,186 (par. 148, R. 105). The two figures do not exactly correspond because the Secretary added $143,143 for additions and betterments since the first decision, but excluded the Transit House, given a cost of reconstruction new in the second hearing by the Government engineer of $132,726 (Government exhibit 114, R. 434). Allowing for these inclusions and exclusions, the difference between the cost of reproduction new in the first decision and in the second decision is $223,966. The depreciation reserve, as will later be shown, must be based upon cost of reproduction new. Assuming a 25-year life, in accordance with the estimate of the Government en-

gineer, the lesser cost of reproduction new of $223,966 in 1932 could not justify a reduction of more $8,959 per year in the allowance for a depreciation reserve, even if the Secretary had been correct in his first decision. The Secretary has, however, reduced the amount allowed in the first decision by $23,500 per annum.

The facts and figures stated in the preceding eleven numbered paragraphs are the outstanding ones which must be considered in discussion of this subject. These proposed findings were suggested to, but not made by the District Court.

PRINCIPLES ESTABLISHED BY THIS COURT CONCERNING DEPRECIATION RESERVE.

Aside from the decision that an adequate depreciation reserve must be allowed as a part of operating expenses (*Knoxville* v. *Knoxville Water Co.*, 212 U. S. 1, 53 L. ed. 371), we are able to discover but two definite principles decided by this court concerning the allowance for a depreciation reserve. They are the following:

1. "The question of the amount which should be allowed annually for depreciation is a question of fact." *Clark's Ferry Bridge Co.* v. *Public Serv. Com.*, 291 U. S. 227, 240, 78 L. ed. 767, 774.

2. The allowance for annual depreciation must be based upon present value. "It is the settled rule of this court that the rate base is present value, and it would be wholly illogical to adopt a different rule for depreciation." *United R. & Electric Co.* v. *West*, 280 U. S. 234, 254, 74 L. ed. 390, 411.

THE AMOUNT ALLOWED BY THE SECRETARY APPEARS TO BE LOWER THAN THAT AUTHORIZED IN ANY OF THE DECIDED CASES.

We have pointed out in the paragraph numbered 6 above that the allowance of $41,500 per annum for a depreciation

reserve would require 63 years to equal the cost of reproduction new and would, consequently, be at the rate of 1.6 per cent per annum. This appears to be a lower rate than any allowance authorized in the federal courts.

In *San Joaquin & Kings River C. & I. Co.* v. *Stanislaus County,* 191 Fed. 875, 886, the court allowed depreciation at the rate of approximately 3 per cent per annum.

In *Pioneer Telephone & Telegraph Co.* v. *Westenhaver,* 118 Pac. 354, 363, the court allowed 7 per cent per annum for a depreciation reserve.

In *Fort Worth Gas Co.* v. *City of Fort Worth,* 35 F. (2d) 743, 747, the court allowed a depreciation reserve of approximately 4 per cent per annum.

In *Wichita Gas Co.* v. *Public Service Commission,* 3 F. Supp. 722, 727, the court allowed a reserve amounting to 3 per cent per annum and disapproved an allowance of 1.87 per cent per annum, which is slightly more than that allowed by the Secretary in this case.

In *Pacific Gas & Electric Co.* v. *Railroad Commission,* 5 F. Supp. 878, 880, one of the grounds stated by the court for allowing the injunction was that the annual depreciation allowance was only 1.8 per cent, or more than the allowance in the present case.

In *Chesapeake & Potomac Telephone Co.* v. *West,* 7 F. Supp. 214, 236, the court approved 4 per cent per annum.

In *Clark's Ferry Bridge Co.* v. *Public Serv. Com.,* 291 U. S. 227, 78 L. ed. 767, this Court approved (and we believe it is the only time it did approve such a basis) a depreciation reserve which, set aside each year *"with 4 per cent simple interest,"* would be sufficient at the end of 50 years to rebuild a bridge. That was a single structure which the Court estimated would have a life of 50 years, quite different from a stockyards with many property units with varying lives and requiring replacements from year to year.

We have pointed out that the allowance by the Secretary of $41,500 would have to be so invested as to produce *7 per cent per annum, after taxes, compounded annually,* in order to produce the cost of reconstruction new of appellant's property in 25 years, the life estimated by the Government engineer. If, as in the *Clark's Ferry Bridge Company case,* the depreciation reserve had been estimated upon a basis of 4 per cent simple interest per annum upon the annual contributions to the reserve, then, the annual allowance for the reserve, in order to equal $2,637,186 in 25 years, would have to be $71,275 per year or $29,775 in excess of the amount allowed by the Secretary. *No rate of depreciation on such a low percentage basis, or requiring such a high interest return, has found approval in the decided cases.*

THE SECRETARY HAS NO STATUTORY AUTHORITY TO PRESCRIBE THE AMOUNT OF A DEPRECIATION RESERVE.

We call attention to the fact that the *Packers and Stockyards Act, 1921,* does not authorize the Secretary to prescribe the amount of an annual allowance for a depreciation reserve. Such authority is specifically given to the Interstate Commerce Commission by section 20 (5) of the *interstate commerce act,* U. S. C. A. tit. 49, § 20 (5). The fact that Congress deemed it necessary to enact such a provision as a part of the *interstate commerce act,* in order to give the Commission that power, is itself indicative of the absence of such authority in the Secretary under a statute which contains no such provision.

Lindheimer v. *Illinois Bell Teleph. Co.,* 292 U. S. 151, 78 L. ed. 1182, also arose under a statute which gave the Illinois Commerce Commission power to prescribe the amount of the annual depreciation allowance. That section is chapter 111⅔, § 14, *Smith-Hurd Illinois Revised Statutes* 1935, and reads as follows:

"The Commission shall have power, after hearing,

> to require any or all public utilities to keep such accounts as will adequately reflect depreciation, obsolescence and the progress of the arts. The Commission may, from time to time, ascertain and determine and by order fix the proper and adequate rate of depreciation of the several classes of property for each public utility; and each public utility shall conform its depreciation accounts to the rates so ascertained, determined and fixed."

There has been no charge here of fraud, waste or abuse of discretion. We do not say that the Secretary may not inquire into the question from that standpoint. But there is certainly more latitude to be allowed to management in the absence of such statutory power than in a case where the regulatory tribunal is authorized by statute to fix the amount of an annual depreciation reserve and the company thereafter is required to follow such order.

We submit that, where the estimate set up by appellant is based upon an intelligent study of the facts, of the history of appellant's structures, and indicates an honest attempt to determine the amount which should be set aside as an annual depreciation reserve, the Secretary may not change that amount unless and until such a period has passed in the life of the property as will show that the amount assigned to that purpose was wasteful, fraudulent, or plainly excessive. This would mean a period within which all the major structures, such as the Exchange Building, pens, alleys, etc., had reached the end of their useful lives and been renewed.

Where the regulatory tribunal, such as the Secretary of Agriculture, is *not* authorized by law to prescribe the amount of a depreciation reserve, it is submitted that *his findings are not entitled to any greater weight than are those of the experts employed by appellant or of its officers and directors.* Under such circumstances, lacking the statutory power, the Secretary

cannot "ignore items charged by the utility as operating expenses unless there is an abuse of discretion in that regard by the corporate officers." *Missouri ex rel. S. W. Bell T. Co.* v. *Public Serv. Com.*, 262 U. S. 276, 289, 67 L. ed. 981, 985. *And the District Court should exercise its independent judgment on the facts.*

Neither may the District Court dispose of so important an item merely by the statement (11 F. Supp. at page 335) "we are certain there is no clear showing he was not right." Since the Secretary did not have statutory authority to do what he did, it was the duty of the District Court to weigh the evidence and decide accordingly.

THIS COURT HAS NEVER AUTHORIZED OR REQUIRED THE IMPOSITION OF A COMPOUND INTEREST SINKING FUND BASIS FOR AN ANNUAL DEPRECIATION RESERVE.

In *Lindheimer* v. *Illinois Bell Teleph. Co.*, 292 U. S. 151, 167, 78 L. ed. 1182, 1192, this court defined depreciation as follows:

> "Broadly speaking, depreciation is the loss, not restored by current maintenance, which is due to all the factors causing the ultimate retirement of the property. These factors embrace wear and tear, decay, inadequacy, and obsolescence. *Annual depreciation is the loss which takes place in a year.*" (Emphasis ours.)

The *straight line method* has been prescribed for railroads by the Commission. *Telephone and Railroad Depreciation Charges*, 177 I. C. C. 351.

The *straight line method* is defined by the American Society of Civil Engineers as one which makes provision from earnings for equal annual depreciation allowances of such size for any property unit that the sum of the allowances without interest will equal the cost, less salvage, of each unit when it reaches the end of its estimated service life (R. 648).

The *sinking fund method* is described by the same society as one which makes provision from the earnings for equal annual depreciation allowances of such size for any property unit that if these allowances are invested in a sinking fund, they will, with accumulations of interest, compounded annually, amount to the cost, less salvage, of the unit at the time when it reaches the end of its estimated service life (R. 649).

It must be apparent that the Secretary has here prescribed the sinking fund compound interest method. By reference to Government witness Bachmann's exhibit 124, pages 12-15, inclusive, (one of the original exhibits certified to this court) it will be observed that Mr. Bachmann, using *the structural costs of reproduction new and the expected life tables contained in Government exhibit* 114 of Hermann C. Henrici, Government engineer, (R. 433; appendix to brief, p. 78) restated Mr. Henrici's conclusion that an annual depreciation reserve of $113,492 would be necessary on the straight line basis. Mr. Bachmann then made a computation to determine how much the annual allowance would have to be *upon a 5 per cent semi-annual sinking fund basis,* that is, upon an annual contribution to be compounded semi-annually at 5 per cent. Upon this computation, *the necessary allowance would be* $50,000 *per year* (R. 457). But the Secretary did not allow even $50,000 per year. He allowed $41,500 per year. As we have stated in paragraph 9, page 139, this amount of $41,500 would have to earn a net return after taxes of 7 per cent per annum continuously, *such interest to be compounded annually,* in order to equal the cost of reproduction new at the respective terminations of the lives of the individual property units.

We shall hereafter advert to the impropriety of imposing a *compound interest sinking fund method* in which appellant has to take the risk of investing and reinvest-

ing the funds. At this point, we merely desire to point out that we cannot, in any of the cases decided in this court, find one where the court has approved or required the *compound interest sinking fund method.* The nearest approach to that method ever approved in this court was in *Clark's Ferry Bridge Co.* v. *Public Serv. Com.*, 291 U. S. 227, 78 L. ed. 767, where the court affirmed an order of the Pennsylvania Commission in which the amount of the annual depreciation allowance for a single structure (a bridge) was based upon 4 per cent *simple interest.* If in this case we use the cost of reproduction new adopted by the Secretary of $2,637,186 and for an annual depreciation reserve an amount to be set aside each year at 4 per cent *simple* interest, the annual allowance will have to be $71,275 per year, instead of the $41,500 per year allowed by the Secretary, or $29,775 in excess of the amount allowed by the Secretary.

THE SINKING FUND METHOD SHOULD GO ONLY WITH AN UNDEPRECIATED RATE BASE AND THE STRAIGHT LINE METHOD WITH A DEPRECIATED RATE BASE.

Upon reason, it has been the opinion of competent authorities that the *sinking fund method* of establishing a depreciation reserve should go only with an *undepreciated* rate base and that where a *depreciated rate base* is used the *straight line method* should be followed. In this case, the Secretary has used a *depreciated rate base,* the cost of reproduction new of appellant's structured found used and useful by the Secretary being $2,637,186 and the cost of reproduction new less depreciation being $2,039,616 (par. 148 of decision, R. 105). It is the latter figure which has been used to compute the rate base.

In prescribing the straight line method for the use of railroads, this point was the subject of an extended discussion by the Commission in the proceeding entitled *Tele-*

phone and Railroad Depreciation Charges, 118 I. C. C. 295; 177 I. C. C. 351. For the force of its reasoning, we might hope that the court could find it possible to read the discussion in the Commission's opinions, printed at pp. 81-87 of the appendix to this brief. The Commission quoted with approval the contention upon this point of the Public Service Commission of Oregon (p. 355) as follows:

> "Manifestly, the *straight-line method* of calculating depreciation cannot properly be used in conjunction with an *undepreciated rate base,* nor should the *sinking fund principle* be followed where a *depreciated rate base* is considered. In other words, the public cannot equitably be required to pay for capital as it is consumed, *i. e.,* on the straight-line basis, and at the same time be required to pay a return upon such consumed capital, *i. e.,* on an undepreciated rate base. Nor should a utility company be asked or required to forego its legitimate return upon the full undepreciated value of its property unless its capital is fully repaid as rapidly as it is consumed." (Emphasis ours.)

This point has apparently been little discussed in the decisions of the lower courts. It was mentioned in *Los Angeles Gas & Electric Corporation* v. *Railroad Com'n.,* 58 F. (2d) 256. This is the case which was before the Court in *Los Angeles G. & E. Corp.* v. *Railroad Com.,* 289 U. S. 287, 77 L. ed. 1180. The District Court does not discuss the amount allowed for a depreciation allowance but states, at 58 F. (2d) 261:

> "It is to be noted that under accepted rules, as between straight line and sinking fund methods, *the sinking fund base is undepreciated,* while the *straight line base is a depreciated base.*" (Emphasis ours.)

The concurring opinion of Judge Wilbur in the same case, at page 279, made a similar statement.

In the present case, the Secretary has undertaken to cut appellant's revenues and values in both ways, that is, he uses a *depreciated* rate base and allows an amount for a

depreciation reserve which must necessarily be accrued on a *compound interest sinking fund method* at 7 per cent net compounded annually. This is contrary both to precedent and reason.

The Secretary of Agriculture has adopted an amount and method which is directly contrary to that which would accrue were this stockyards subject to the regulation of the Commission, which has statutory power to prescribe a depreciation allowance, while the Secretary has not. If it be said that the straight line method may, in certain cases, ultimately result in the accrual of too large a reserve, the answer to that proposition has been stated in the decisions of the Commission and is apparent. All that is necessary is to extend the expected lives of the structures to the extent that may be indicated by experience. This, appellant has done in the very elaborate study made by its own witness, Mr. Saunders (R. 641-768), which shows that the amount to be set aside annually should be $100,000.

THE STRUCTURE DEALT WITH IN THE CLARK'S FERRY BRIDGE COMPANY CASE IS DISSIMILAR TO APPELLANT'S PLANT.

In *Clark's Ferry Bridge Co.* v. *Public Service Com.*, 291 U. S. 227, 78 L. ed. 767, this Court quoted with approval the following statement of the Pennsylvania Supreme Court in the decision below:

> "'It (the Commission) allowed $7,678 annually. This sum set aside each year, with 4% *simple* interest will in fifty years produce approximately $767,800, sufficient to rebuild the bridge as now valued. *The straight line method advocated by the Company will in fifty years with 4% simple interest produce a fund twice as great as that necessary to replace the bridge. The straight line method is often used for short-lived structures, or plants of a character that they can be restored from time to time to the original condition of efficiency.* * * * *It is not so fair or equitable when applied to a long-lived structure or one that is disin-*

tegrating gradually and continuously and not capable of being restored to its original condition. The company may not be required to apply the income received from the depreciation fund to make up any deficit of operation (*Public Utility Commrs.* v. *New York Teleph. Co.*, 271 U. S. 23, 70 L. ed. 808, 46 S. Ct. 363), but it is not entitled to an allowance, which exclusive of interest earned on the fund, will be sufficient to rebuild the bridge, when its life is done, but only to such an allowance as will with reasonable interest added make a fund sufficient to replace the bridge when it requires replacement.' In this view, the Court thought the amount allowed by the Commission to be 'fair and reasonable in the circumstances.' The Court added that the Commission had included in its allowance for operating expenses an item of $1,800 for 'maintenance.'" (Emphasis ours.)

The distinction between this type of structure and those operated by appellant is even more clearly emphasized in the decision in the court below, *Clark's Ferry Bridge Co.* v. *Public Service Commission*, 165 Atl. 261. The case involved but a single structure which the court estimated would have a life of 50 years.

In contrast with those facts, we call attention to the different kind of a plant operated by appellant. The principal structures in that plant are set forth in connection with the testimony of the Government engineer, Mr. Hermann C. Henrici (R. 433-435, Government exhibit 114, appendix to brief, p. 78). In order to list the major portion of those structures according to the age assigned to them by Mr. Henrici, we have merely changed the order in the table printed at page 80 of the appendix to this brief, so as to group the various kinds of property in accordance with the life expectancy determined by the Government engineer. It will be observed that, broadly speaking, the Government engineer estimates a life of 20 years for live stock pens and similar wooden structures; 30 years for scales, etc.; 35 years for paving and sewers; 40 years

for brick buildings; and 50 years for some such items as water pipe, sewer pipe, etc.

Thus, we do not have a single structure which will wear out at a single date, but many comparatively short-lived structures which have to be replaced from year to year. Such a condition will obviously interfere with the use of the 4 per cent *simple* interest method approved in the *Clark's Ferry Bridge Company case,* because of the practical difficulty of permitting the accrual of principal and interest intended to replace the numerous units as their useful life expires from month to month.

THE SECRETARY HAS FAILED TO MAKE ANY ALLOWANCE FOR TAX DEDUCTIONS IN CONNECTION WITH THE DEPRECIATION ALLOWANCE.

The depreciation allowance of $41,500 would have to be invested so as to earn interest continuously at the rate of 7 per cent per annum, *compounded annually,* to equal the cost of reproduction new determined by the Secretary, in 25 years, the estimated life fixed by the Government engineer. This assumes that each year the accrual of $41,500 could be placed in a fund thereafter to earn compound interest. But it overlooks entirely the taxes which would be levied upon that fund and the annual income therefrom. See cross-examination of Government witness Bachmann (R. 466-467). This testimony demonstrates that if out of this fund $100 were invested in a 5 per cent bond, the various taxes upon the bond and upon the 5 per cent income therefrom, including personal property tax of the city, personal property tax of the county, franchise tax, Missouri state income tax, and federal income tax, would be $3.57 for each $5.00 of return, leaving a net return to the owner of the bond of only $1.43, or 1.43 per cent. Even upon Mr. Bachmann's theory of a 5 per cent investment, with interest compounded semi-annually, the fund

would fall short by about two-thirds of producing the desired amount. This was admitted by Mr. Bachmann (R. 467).

THE SECRETARY MAY NOT LAWFULLY REQUIRE APPELLANT TO INVEST MONEY FOR THE PURPOSE OF EARNING A RETURN TO PROVIDE AN ADEQUATE DEPRECIATION RESERVE.

The allowance of $41,500 could equal the cost of reproduction new of the property at the end of the life expectancy stated by the Government only by investing that amount so that it would earn a net return of 7 per cent to be compounded annually. It is respectfully submitted that the money earned for services rendered belongs absolutely to appellant and that *the Secretary is not empowered by law to require appellant to do any specific act with money lawfully obtained for services rendered.* We repeat that *the Secretary is given no statutory authority with respect to the amount of a depreciation reserve or the method in which it should be invested after it is collected.* In *Board of Public Utility Comrs.* v. *New York Teleph. Co.*, 271 U. S. 23, 32, 70 L. ed. 808, 813, this court said:

> "Customers pay for service, not for the property used to render it. * * * By paying bills for service they do not acquire any interest, legal or equitable, in the property used for their convenience or in the funds of the company."

IT WOULD BE IMPRACTICABLE TO USE THE DEPRECIATION RESERVE IN ADDITIONS AND IMPROVEMENTS TO THE PROPERTY OR IN APPELLANT'S BUSINESS.

This point is perhaps obvious. To bring about the desired result, the original amount in the fund and all the accretions thereto would have to be earning 7 per cent annually, to be compounded each year. *The fund could not be broken up by withdrawing from it small sums as they were needed.*

If the money were invested in additions to the plant as they might be necessary, it would be necessary to earn a fair return, not only upon the additional property in the plant but also upon the amount invested from the sinking fund. Assuming 7 per cent to be a fair return, this could not be accomplished unless appellant could earn 14 per cent upon the specific pieces of property. Such a complex method of keeping accounts and the use of money was condemned as impracticable in Transactions of the American Society of Civil Engineers, December, 1917 (R. 685, 688).

INVESTMENT IN INTEREST BEARING SECURITIES WOULD BE IMPRACTICABLE.

The investment of the allowance of $41,500 per year in interest bearing securities would be impracticable for reasons well known to this court. No one knows, nor was any Government witness upon this record able to suggest, a security in which the fund could be invested with an assurance of earning 7 per cent each year without interruption or without loss of interest or principal. If the sinking fund method were to be used at all, the investment could only be in securities of as high grade as Government bonds which can hardly be purchased to give a return of 3 per cent. But the amount adopted by the Secretary would require a return of 7 per cent.

APPELLANT HAS DEFINITELY PROVED THE NECESSITY FOR AN ANNUAL DEPRECIATION ALLOWANCE OF NOT LESS THAN $100,000.

The only question here to be decided is what will constitute a proper annual depreciation allowance for the future. To determine this question, upon the hearing before the Secretary, appellant employed an experienced engineer and statistical analyst of high qualifications who has had valuable experience upon this subject. This was Mr.

Henry J. Saunders. We invite particular attention to all of Mr. Saunders' testimony upon direct and cross-examination, which appears at pages at 641-766 of the record. We state here only a brief summary of the studies made by Mr. Saunders.

Mr. Saunders extended somewhat the estimated lives of the various classes of appellant's property, the result being that he obtained an average annual depreciation of 3.77 per cent per year (R. 668), as compared with 4.037 per cent obtained by the Government engineer Henrici (R. 433-435, appendix to brief, p. 78). Mr. Saunders made very complete studies of the results of the funds which had been set up by appellant in the past. He found that, with respect to the items of property which had actually reached the end of their service lives and been retired, *the amount set aside in the depreciation reserve had always been inadequate to meet the replacement cost.* This is demonstrated by respondent's (appellant's) exhibits 120-123, inclusive, which are amongst the original exhibits certified to this court, and the testimony of Mr. Saunders in connection therewith (R. 654-657); that is to say, the estimated service lives and the estimated amounts for the specific units of appellant's property heretofore set up by appellant were too low in that, so far as the units had been retired, they were retired short of the estimated service life and, consequently, the amount in the depreciation reserve was inadequate.

This testimony also shows some of the errors in the Secretary's decision. For example, in paragraph 175 of the decision (R. 117), it is stated:

> "The character of the pens and alleys is such that they can be maintained at a fairly uniform condition by adequate repairs."

This would indicate that it is not necessary to set up a depreciation reserve for pens and alleys. On the contrary,

the study made by Mr. Saunders of appellant's experience, as indicated by its books, shows that in the years 1926 to 1930, inclusive, appellant actually retired pen structures having an investment value of $41,639.85. See column 2, page 1, of respondent's (appellant's) exhibit 126, one of the original exhibits certified in this case. Of course, if it had been possible to keep the pens in fairly uniform condition by adequate repairs, such retirements would not have been made.

THE RECORD SHOWS THE PROPERTY HAS NOT EXISTED A SUFFICIENT LENGTH OF TIME TO CAUSE IT TO REACH A PERIOD OF NORMAL DETERIORATION.

In paragraph 176 of the Secretary's decision (R. 118), it is stated that the property has "existed a sufficient length of time to cause it to have reached that condition of normal deterioration wherein ordinary repairs and replacements tend to keep its physical condition almost the same from year to year."

Likewise, it is stated in paragraph 177 (R. 118), that "the lack of sufficient experience does not relate to the greater part of the value of the property."

Apparently, it is assumed by the Government that the stockyards property was created as it now exists about 1895 and, therefore, has been in existence about 40 years. The contrary is shown by the testimony of Mr. Churchill (R. 625-627). At first sufficient pens and alleys were built only to meet the demands at that time. The Exchange Building is approximately 30 years old. The first Exchange Building was burned and the present Exchange Building was erected about eight blocks north of the former Exchange Building (first hearing, R. 241). The estimated life of this building is 50 years according to appellant's engineer, and 40 years according to the Government engineer, Mr. Henrici.

In order to demonstrate the very material percentage of appellant's structures which have not yet reached the end of their service lives, we have printed at page 80 of the appendix to the brief what is merely a restatement of items taken from Government exhibit 114, so changed as to group those given the same age expectancy by the Government engineer. Practically none of the property included within the 50-year, 40-year, 35-year, and 30-year life groups have reached the point where replacement has been necessary, having not yet reached the life estimated by the Government engineer. Consequently, a study of appellant's experience as to retirements, as made by the Government witness Bachmann, does not measure the depreciation which is occurring or the amount of the funds which may shortly be necessary as the end of service lives of the various units of property is reached.

NO SURPLUS IN DEPRECIATION RESERVE FOR PAST YEARS MAY BE USED AS A BASIS FOR REDUCING FUTURE RATES.

We desire to repeat here and to emphasize a point already made at page 59 of this brief. In the District Court, it was argued that, unless the Secretary's findings with respect to the annual allowance for depreciation, are inadequate, no confiscation can be demonstrated. This was apparently upon the theory that an excessive amount had been set aside for a depreciation reserve in the past. Even if that were true, it cannot be now appropriated to public use. *Board of Public Utility Comrs.* v. *New York Teleph. Co.*, 271 U. S. 23, 70 L. ed. 808. This overlooks the fact, however, that the rates prescribed by the Secretary, at the time of the hearing, and during the prior six years, would have produced a confiscatory return, *even allowing for an annual depreciation reserve only the amounts approved by the Secretary.* The argument of the Government runs upon the assumption that appellant's gross and

net operating income is as great now and will be for the future as it was for the peak years of 1928 and 1929. This is exactly contrary to the fact. In 1928, appellant's gross operating income for rate making purposes was $817,201. See table, page 55 of this brief. In 1932, it was only $669,629, or $147,572 less. Thus, the difference in gross income between 1928 and the time of the hearing would have more than wiped out the entire depreciation reserve claimed as proper by appellant. In 1928, appellant's *net* operating income for rate making purposes was $339,267. See table, page 55 of this brief. In 1932, it was $190,656, or $148,611 less than in 1928.

SUMMARY OF APPELLANT'S CONTENTIONS WITH RESPECT TO ANNUAL ALLOWANCE FOR DEPRECIATION RESERVE.

1. The decisions and the facts demonstrate that the annual allowance of $41,500 is inadequate.

2. To produce the required result, the allowance made by the Secretary would have to be invested in securities which would produce *7 per cent per annum after taxes.* The deduction of taxes would reduce the income from the fund by approximately two-thirds.

3. If based on 4 per cent *simple* interest, as in the *Clark's Ferry Bridge Company case, supra,* the annual charge would have to be increased to $71,275 per year; but the investment would have to net a gross return *more than double* 4 per cent in order to allow appellant a net income of 4 per cent *simple* interest per year.

4. The Interstate Commerce Commission has disapproved the compound interest sinking fund method after mature deliberation; has held that the sinking fund method must accompany an *undepreciated* rate base, while the straight line method should be used with a *depreciated* rate base. Decisions of the lower courts also sustain this conclu-

sion. The Income Tax Bureau uses the straight line method only. These conclusions of other federal agencies are persuasive and entitled to weight.

5. The failure to allow for necessary tax deductions from income demonstrates the confiscatory character of the annual allowance of $41,500.

6. The Secretary has no statutory authority, directly or indirectly, to require appellant to invest money for the benefit of its patrons, and to assume the risk of such investment, for the purpose of earning a return to provide an adequate depreciation reserve, not paid at the time of use by the patrons.

7. It would be impracticable to use the annual depreciation allowance, made by the Secretary, for additions and improvements to the property.

8. The experience of the company shows that the amounts heretofore set aside for an annual depreciation reserve have not been adequate at the expiration of specific units of property.

9. Appellant has definitely proved the necessity for an annual depreciation allowance of not less than $100,000.

10. Certain errors and fallacies are contained in the Secretary's decision concerning the depreciation reserve, amongst them being the following:

(a) The amount of an appropriate depreciation reserve cannot be determined by a study of retirements during a comparatively short period within which only a small portion of the structures were retired.

(b) The statement that the pens and alleys can be maintained at uniform condition by adequate repairs is contrary to the evidence.

(c) The record shows that the property has not existed a sufficient length of time to cause it to reach a period of normal deterioration.

11. The decision of the Secretary respecting a deprecia-

tion reserve would unlawfully deprive appellant of at least $58,500 of income per year.

12. The District Court erred in declining to exercise its independent judgment upon the law and the facts.

13. For these reasons the order is contrary to the evidence, confiscatory, and void.

XV.

THE DISTRICT COURT ERRED IN FAILING TO FIND THAT THE REAL AND TRUE VALUE OF APPELLANT'S LAND IN ZONE A EXCEEDED THE VALUE FIXED BY THE SECRETARY BY APPROXIMATELY $275,000, AND IN FAILING TO EXERCISE ITS INDEPENDENT JUDGMENT UPON THE FACTS AND LAW.

The alleged errors of the District Court are covered by no. 4 of our statement of points to be relied upon and by assignments of error nos. 15 and 16.

FAILURE OF DISTRICT COURT TO EXERCISE INDEPENDENT JUDGMENT UPON THE LAW AND THE FACTS.

In assignment of error no. 15 appellant avers that the District Court erred because of its failure to exercise its independent judgment upon the law and the facts concerning land values. We need not fully discuss the question at this point, for the failure of the court to exercise its independent judgment upon the law and the facts, as applied to all of the contested points, is the subject of the chapter appearing at pages 10-22 of this brief. We may remark that the statement of the court concerning land values (11 F. Supp. 322, 333) makes it very evident that the court specifically declined to weigh the evidence upon this subject.

SCOPE OF APPEAL.

In the District Court, as well as upon this appeal, we assigned error only as to values fixed by the

Secretary for zone A (decision, par. 110, R. 83). The reason is that the values fixed by the Secretary for the other zones (par. 121, R. 88) fairly represent an average of the values fixed by the three land appraisers, Zelinski for the Government, and Spratt and Quinn for appellant. With respect to zone A, however, which is by far the most valuable of the land used by appellant for stockyards purposes, it is respectfully submitted that the Secretary fixed a value so low as to amount to confiscation.

IMPORTANCE OF LAND VALUES IN ZONE A.

The Secretary finds that 3,003,973 square feet of land in appellant's zone A are used and useful for stockyards purposes (pars. 90 and 111 of decision, R. 69 and 84). This is about 70 per cent of the total amount of land found to be used and useful; and zone A represents about 75 per cent of the total value of appellant's land as determined by the Secretary.

In the first decision (par. 73, appendix to brief, p. 38) the Secretary found that the value of the land in zone A was 25 cents per square foot. In the present decision, he finds that the same land has a value of 16 cents per square foot. This is a reduction of 9 cents per square foot, or 36 per cent, since the first decision; and that reduction, applied to the 3,003,973 square feet, amounts to $270,357 in value. A return of 7 per cent upon this difference in value is $18,925, a substantial amount in determining whether the totality of appellant's income is excessive.

THE CHANGE IN VALUE DETERMINED BY THE SECRETARY IS SO GREAT AS TO REQUIRE CAREFUL EXAMINATION.

On the first hearing, all three of the land appraisers (one for the Government and two for appellant) valued the land in zone A at a higher unit price than that allowed by

the Secretary. The Government appraiser, W. L. Mack, valued this land at 35 cents per square foot (R. 185). Appellant's appraisers, Spratt and Atkinson, valued this land at 30 cents per square foot. (R. 253, R. 267). The Secretary fixed the value at a lower figure than that determined by either the Government's or appellant's appraisers, namely, 25 cents per square foot (par. 73, first decision, appendix to brief, p. 38).

In 1932, in the depth of the depression, when the second valuation was made, Spratt reduced his value for zone A to 26 cents per square foot (R. 770). Atkinson had died in the meantime. An additional appraiser Theo. J. Quinn, employed by appellant on the second hearing, then appraised the land in zone A at 35 cents per square foot. If we adopt the change in value fixed by Spratt who had appraised the land in both periods, and was the only man who did so, his reduction from 30 cents to 26 cents would indicate *a loss in value of 13 per cent due to the depression as against the 36 per cent determined by the Secretary.*

The value fixed by the Secretary in the first decision was very low. It was 10 cents per square foot below the value fixed by the Government appraiser and 5 cents below the value fixed by appellant's appraisers. All three of those men had had long experience in real estate business in St. Joseph. It is also to be noted in passing that in *St. Joseph Stocks Yards Co.* v. *United States,* 58 F. (2d) 290, in the footnote on page 295, a majority of the court expressed the following opinion:

> "As to the principal matters in controversy between the parties in connection with the valuation of the petitioner's property, to wit, *the value of the lands of petitioner upon which its business chiefly is conducted* and the element of going concern value, a majority of the court is of the opinion that the values found by the Secretary are against the weight of the competent evidence." (Emphasis ours).

In the second decision the Secretary fixed the value at 16 cents, being a reduction of 9 cents per square foot, or *36 per cent*, in the three year interim between the time of the first appraisal and the time of the second appraisal. Such a reduction is so serious as to require a satisfactory explanation. The following statement in the decision of this Court in *West* v. *Chesapeake & P. Telephone Co.*, 295 U. S. 662, 672-674, 79 L. ed. 1640, 1648, is quite pertinent to the present discussion of land values:

> "But it is to be remembered that such a property as that here under consideration is a great integrated aggregate of many and diverse elements; is not primarily intended for sale in the market, but for devotion to the public use now and for the indefinite future; and has, so far as its market value is concerned, no real resemblance to a bushel of wheat or a ton of iron. While, therefore, the owner of such a property must assume and may not pass on to the public the risk involved in a general decline in values, and may have the advantage also of a general rise in such values, it would not only be unfair but impracticable to adjust the value and the consequent rate of return *to sudden fluctuations in the price level. For in its essence this is the sort of aggregate whose value is not fairly or accurately reflected by such abrupt alterations in the market.* A public service corporation ought not, therefore, in a rate proceeding, to be permitted to claim to the last dollar an increased value consequent upon a sudden and precipitate rise in spot prices of material or labor. *No more ought the value attributable to its property to be depressed by a similar sudden decline in the price level.* • • • *What the Commission in effect did was to take the temporary low level of December, 1932,* and apply this low level for the indefinite future in ascertaining the so-called fair value of the company's plant and property. The experience of the two years which have elapsed since the Commission's order clearly indicates the impropriety of the use of its method in the appraisal of a property such as that of this company." (Emphasis ours).

In the present case the Secretary unquestionably took the temporary low level of 1932.

NO BASIS FOR FINDING IN THE FIRST DECISION THAT GOING CONCERN VALUE WAS INCLUDED IN LAND APPRAISAL.

In the first decision (par. 73, appendix to brief, p. 38) the Secretary said, in connection with fixing the value of 25 cents per square foot:

> "It is very clear from the record that all of these appraisers included in their valuation the going concern element inhering in the land because of its integration in, and use as a part of a going operating concern, namely, the stockyard."

There is nothing in the testimony of the appraisers on the first hearing to indicate that any going concern value had been included in their appraisals. We refer to the testimony of the Government appraiser Mack (R. 183-206) and the testimony at the same hearing of appellant's appraisers Spratt and Atkinson (R. 235-270). *Their evidence contains nothing which would indicate that their appraisal included going concern value.* It was based upon sales of adjacent land. At the time of the second hearing, both Mack and Atkinson had died. Spratt, however, whose appraisal of this land was 30 cents per square foot (lower than that of the Government appraiser) on the first hearing, was still living and again appraised the land for appellant. Upon the second hearing, Spratt specifically denied that his first appraisal of the land contained anything in the way of going concern value. He testified that that appraisal applied only to bare land value (R. 771-772). All of the appraisals, except that made by the Secretary in his present decision, were based upon actual transfers of adjacent land.

FUNDAMENTAL ERROR OF SECRETARY IN PRESENT FINDING AS TO VALUE OF LAND IN ZONE A.

Appellant can hardly expect this Court to weigh all of the testimony and the rather involved transfers and loca-

tions in an attempt to determine the truth as between the land appraisers. If, however, we are able to demonstrate one glaring and controlling mistake in the conclusion reached by the Secretary, we may be able to satisfy this Court that the Secretary erred in the value fixed for the land in zone A.

That very obvious error, both of premise and conclusion, is to be found in pars. 106, 109 and 110 of the decision (R. 81 and 83). *The Secretary fixed the value for zone A upon an analysis of the sale of the Belt Railway. The Secretary erred, both in his facts as to areas and other elements,* in undertaking to analyze the sale of the St. Joseph Belt Railway in 1929, and in applying the result of that faulty analysis to the value of land in zone A. This and other points in connection with the land values may be more readily visualized by reference to the sketch map of appellant's property at page 88 of the appendix to the brief. In paragraphs 106 and 109 the Secretary discusses this sale of the Belt Railway, attempts therefrom to analyze the land value, determines that the sale indicated a value of 18 cents in 1929, and thereafter reduces it 2 cents to indicate a value in 1932. The Secretary erred, (1) *as to the amount of land transferred in that sale,* and (2) *as to any possible application that could be made of the facts.*

For many years, appellant owned all of the capital stock of the St. Joseph Belt Railway Company, a terminal railway which served the stockyards, packing houses, and other industries in the same general area. In 1929, appellant sold the entire capital stock of the railway to other interests for $1,500,000 (par. 106 of decision, R. 81). The transfer of the capital stock carried with it the ownership of the land and all equipment of the Belt, including tracks, motive power, engine house, shops, etc. From this sale of the *capital stock* of the Belt, the Secretary undertakes.

by various improper deductions, to determine the value of the portion of the Belt Railway Company *lands* which were formerly a part of zone A of appellant's property.

The transaction was solely a sale of capital stock and as such is not evidence of the value of the component parts of the property sold. The record shows without dispute that the St. Joseph Belt Railway Company was a separate corporation and operated as a common carrier. All of its capital stock was owned by appellant and, until shortly prior to the sale, all the land upon which the railroad operated was likewise *owned* by appellant and *leased* to the railroad. The books of appellant showed an investment in the St. Joseph Belt Railway Company, in 1929, of $531,280.08 (Government exhibit 121-A, sheet 1, one of the original exhibits certified to this court). This property consisted of the usual property of a railroad other than land, such as rails, ties, ballast, engines, switches, roundhouse, etc. So far as the buyer was concerned, its purchase was entirely capital stock because at the time of the consummation of the purchase the railroad owned the land.

None of the witnesses based their appraisals on this transaction. Zelinski, the Government appraiser, disregarded it entirely (R. 541). Quinn made no particular mention of it (R. 796-813); and Spratt merely stated that the entire transaction was corroborative of his appraisal (R. 785-793).

It is difficult to see how a sale of *capital stock* can be used to fix the *value of land* when the land is only a part of the consideration transferred to the purchaser of the stock. It is a matter of common knowledge that the price of capital stocks fluctuates sharply in accordance with earnings or other conditions. To say that the selling price of the capital stock of a corporation is indicative of the value of its land is but another way of saying that the

value of the land of a railroad corporation fluctuates up and down with the increase or decline in its earnings.

The Secretary erred as to facts. Prior to the sale of the Belt Railway capital stock, appellant owned the capital stock of the railway and the land upon which it operated, the land being leased by appellant to the Belt. In order to sell the stock, it was necessary for appellant, prior to the sale, to convey to the railroad 82.356 acres of land upon which the railway at that time operated (R. 785 and 789). See also Government exhibit 128, page 112. The record shows that appellant, in its accounting for this transaction, charged $1,020,499.05 against the land and the balance against the investment in capital stock, etc.

Dividing the 82.356 acres conveyed into the $1,020,499.05 gives an average value of approximately 28 cents per square foot instead of 18 cents as stated in paragraph 109 of the Secretary's decision. *The Secretary in speaking of this land area in paragraph 106 of the decision* (R. 81) *erroneously indicates that the amount was 91.49 acres.* Thus, the *actual sale* of the land represents a value of *28 cents per square foot* and *not* a value of *18 cents per square foot* as stated in paragraph 106 of the decision. Obviously this sale would support a higher value for zone A than the 25 cents allowed by the Secretary in the first decision and much greater than the value of 16 cents in the second decision.

The analysis of the Belt sale was wholly erroneous and arbitrary. Even assuming there may be some evidentiary value to be derived from the sale of the Belt, the analysis made by the Secretary is clearly arbitrary because it contains many errors. The first is that the analysis contained in paragraph 106 of the decision *is based upon 91.49 acres of land* whereas *only 82.356 acres were transferred.*

The second error in the analysis of the Belt sale is that

the Secretary accepts as the true value of the St. Joseph Belt Railway Company in 1928 the sum of $2,500,342. *That value was never determined by anyone nor related to any sale.* It was merely the value set up by the railway in a proceeding before the Interstate Commerce Commission, (see Government exhibit 135, one of the original exhibits certified herewith). That exhibit is a brief filed by the railroad in a proceeding by the Interstate Commerce Commission to recapture excess earnings under section 15A of the *interstate commerce act* (since repealed). The law was repealed before the litigation ended. But the brief of the railroad, which is Government exhibit 135, shows that there was included in the total figure set up as value the following elements which the Secretary has declined to allow in the present case:

Cost of Assembling Capital	$211,699
Going Concern Value	311,855
Appreciation	29,000
Difference Between Cost of Reproduction New and Cost of Reproduction Less Depreciation	281,637
Total	$834,191

None of these items concerned land.

If this total figure of $834,191 be deducted from the claimed value in said brief of $2,500,342, there is left $1,666,151. The sale price of the capital stock of the Belt Railway, $1,500,000, is 90 per cent of that amount; that is to say, using principles of valuation adopted by the Secretary in this case and applying them to the contentions of the Belt in its proceeding before the Commission, its claimed value would have been $1,666,151, one of the items of which was land in the amount of $1,195,591. Even if the land value claimed in that case (30 cents per square foot) were reduced to 90 per cent, it would still leave a value of 27 cents per square foot. If the computation

made by the Secretary were continued by reducing 27 cents by the percentage which Spratt used to reduce his 1929 value to the 1932 level because of the depression, we would still have a figure of 23.4 cents per square foot resulting from any possible analysis of the Belt sale.

The conclusion of the Secretary is arbitrary because the analysis of the sale of the Belt Railway ignores the fact that 75 per cent of the Belt Railway land is not adjacent to zone A of appellant's property but is adjacent to other and less valuable zones.

It should not be expected that the average value per square foot of the land used by the Belt Railway would be equivalent to the value per square foot of the land in zone A, because the Belt extended through other zones of less value. The land map introduced by the Government, Government Exhibit 103 (one of the original exhibits certified in this case), shows the area of the Belt Railway which is adjacent to the various land zones. Only about 13½ acres, or about 16 per cent, are adjacent to zone A. (See sketch map, p. 88 of appendix to brief). Another 5½ acres are adjacent to zone A and other zones; *i. e.*, part to zone D and part to zone C. Even including this 5½ acres with the 13½ acres, there would be only 19 acres adjacent to zone A, which is slightly less than 25 per cent of all the land conveyed to the Belt Railway.

Of the balance, about 17 acres are adjacent to zone F (appraised by Zelinski at 2.3 cents, Spratt and Quinn at 5 cents); 3 acres adjacent to zone B (appraised by Zelinski at 8 cents, Spratt at 13 cents and Quinn at 15 cents); 5 acres adjacent to zone C (appraised by Zelinski at 9 cents, Spratt at 11 cents, Quinn 12½ cents, and valued by the Secretary at 10 cents); and about 38 acres are bounded on the east by zones E (appraised by Zelinski at 7 cents, Spratt at 11 cents, Quinn at 10 cents, and valued by the Secretary

at 10 cents); and D (appraised by Zelinski at 9 cents, Spratt at 15 cents, and Quinn at 12½ cents); on the north by Larabee Mill Tract, which is adjacent to zones C and N (valued by Zelinski and Spratt at slightly less than 7 cents, Quinn at 8 cents, and by the Secretary at 7 cents); on the south by zone F, and on the west by the Union Terminal right of way which adjoins zones J (valued by Zelinski at slightly less than 2 cents, and Spratt and Quinn at 2 cents), and K (valued by Zelinski at slightly over 1 cent, Spratt at ¾ cents, and Quinn at 1 cent).

This latter tract of land (38 acres) certainly is not adjacent to land of appellant which any of the appraisers have appraised on an average of any higher value than 11 cents per square foot when the unit values of all the abutting zones are considered. Using that figure, 11 cents per square foot for the 38 acres, 5 cents for the 17 acres, 13 cents for the 3 acres, and 11 cents for the 5 acres, produces a weighted average appraised unit value of 10 cents per square foot for the zones of appellant which are adjacent to three-fourths of the land of the Belt. Assuming that the fair value of the land adjacent to three-fourths of the land of the Belt Railway is 10 cents per square foot and that the entire land of the Belt Railway is worth an average of 15.6 cents per square foot, the figure adopted by the Secretary, that would make the one-fourth adjacent to zone A worth 32.4 cents per square foot. In other words, even under the erroneous analysis adopted by the Secretary, we would arrive at a value in excess of 30 cents per square foot if consideration were given to the fact that most of the land conveyed to the Belt is *not* adjacent to zone A, but *is* adjacent to less valuable land of appellant.

Still another error of the Secretary in analyzing the sale of the Belt Railway was that he absolutely ignored the fact that *appellant paid the United States Government income tax on the basis of the sale of 82.356 acres at $1,020,-*

499.05, or an average of 28 cents per square foot. One of Government counsel investigated this matter at the office of the Bureau of Internal Revenue in Washington and a copy of his report is included in Government exhibit 128, pages 112 and 113, an original exhibit certified in this case. From this report, it appears that the Bureau of Internal Revenue accepted as a fact appellant's allocation of the purchase price of the $1,500,000 received by it for the Belt Railway stock. Not only did it accept appellant's allocation but appellant paid and the Bureau of Internal Revenue accepted a substantial amount as income tax by reason of that sale. Counsel for the Government may argue that appellant could have apportioned the sale price in any manner it saw fit; however, such a contention loses weight when it is undisputed that appellant paid income tax on the basis of the allocation and that the income tax was accepted by the Bureau of Internal Revenue after a thorough investigation of the matter.

If any conclusion is warranted from this entire transaction, it is that the sale is evidence of an average value of 28 cents per square foot for the land covered by it, which figure is derived by dividing the amount of $1,020,499.05 by 82.356 acres.

It is apparent that the Secretary fixed the value in zone A solely upon his analysis of the sale of the Belt Railway land. It is also apparent that he utterly misconstrued that sale, using a sale price of capital stock to represent land value, using erroneous acreage, and making the other errors above outlined. Unquestionably, that sale was at an average value of 28 cents per square foot and, if it justifies anything at all in this case, it justifies a finding of 28 cents per square foot as the value for zone A. The fact that the Secretary, after an analysis of all of the real estate evidence, fixed the value of zone A in connection with this sale definitely proves the error of his valuation.

THE FINDING OF THE SECRETARY IS ARBITRARY BECAUSE IT IGNORES THE FINDING IN THE FIRST DECISION.

In the first decision (par. 73, appendix to brief, p. 38) the Secretary found that zone A had a value of 25 cents per square foot. In the present decision, he finds (par. 110, R. 83) that it has a value of 16 cents per square foot. Even assuming that some reduction should be made by reason of the depression, and reducing 25 cents by the percentage adopted by the Secretary in paragraph 110, of 13 1/3 per cent, zone A would still have a value of 22 cents per square foot.

There is no sound reason why values should be reduced by so much as 36 per cent by reason of the depression, because the Secretary several times states that the values he has fixed in this proceeding are normals and not depression values. For example, in paragraph 6h (R. 29) he states:

> "In determining the values used as the rate base, depression or stagnation values carefully have been avoided and normals used."

Again in paragraph 110 (R. 83) he states:

> "It is further found that this value (16c for Zone A) does not represent depression or stagnation value but constitutes the reasonable normal value of the land, giving weight to values existing immediately preceding as well as those existing during the present depression."

Even if some reduction should have been made at the time of the hearing because of the depression, the tremendous reduction of 36 per cent can not be justified because of the general improvement in conditions since the hearing. *West* v. *Chesapeake & P. Teleph. Co.* 295 U. S. 662, 79 L. ed. 1640. The fact that this improvement has occurred is admitted by the Secretary in paragraph 6h, where he states:

> "It now seeks another (hearing) because since the

> last hearing there has been a general improvement in those conditions (economic conditions causing depression)."

In this connection, it should be noted that when the previous case was before the same District Court in *St. Joseph Stock Yards Co.* v. *United States,* 58 F. (2d) 290, 295, a majority of the court was of the opinion:

> "that the values found by the Secretary are against the weight of the competent evidence."

It should be remembered that the finding of a value of 25 cents per square foot for zone A in the first decision was the conclusion of the Secretary after weighing the evidence of three witnesses, two of whom were of the opinion that zone A had a value of 30 cents per square foot, and a third that its real and true value was 35 cents per square foot (R. 185, 246, 253, 267).

THE SECRETARY HAS DISREGARDED THE LAW ANNOUNCED BY THIS COURT CONCERNING THE ELEMENTS TO BE DETERMINED IN FIXING LAND VALUES.

It is quite evident from the decision of the Secretary (pars. 93-111, inclusive, R. 70-84) that he adopted the views taken by the Government land witness, Zelinski, at the last hearing (R. 472-568) to the effect that he (the land appraiser) should ignore and not consider the intensity of the use made of appellant's land and the fact that it was peculiarly adapted to its present use (R. 502, 503, 504, 507). Zelinski stated that, if this theory were wrong, his approach to the appraisal was wrong (R. 507). In that connection, he referred to *Minnesota Rate Cases,* 230 U. S. 352, 57 L. ed. 1511. The only rule there stated, applicable here, was that the railroad would have no ground for complaint *if it were allowed a value for its land equal to the fair average market value of similar land in the vicinity;* and that, if a property had a peculiar value or special adapta-

tion for railroad purposes, that would be an element to be considered.

The record shows that all three land appraisers considered the same transactions or transfers, numbered 1 to 147, inclusive, and included in Government exhibit 128, one of the original exhibits certified in this case. In respect to zone A, Zelinski stated:

> "There are no sales of strictly similar lands in the vicinity of this zone." (R. 523).

If that is true, Zelinski's appraisal is not and cannot be based on sales of similar land in the vicinity because there was no such land. In his appraisal report, he claimed a certain sanctity for his appraisal because it was based upon the rule prescribed by this Court in *Minnesota Rate Cases, supra.*

Although Zelinski stated that there were no sales of strictly similar lands in the vicinity of zone A (R. 523), he testified that he gave consideration to 23 transfers in arriving at his unit value for zone A (R. 523, p. 22 of Government exhibit 128). The transfers here mentioned are indicated on the sketch at p. 88 of the appendix to the brief.

But 15 of said 23 transfers are adjacent or in the immediate vicinity of zone A. *The weighted average of these 15 transfers is 36.4 cents per square foot.* Two of this group, sales 34 and 35, were of swampy land and the record shows that none of zone A is swampy land. If these two sales were eliminated as being not similar, the weighted average unit price would be 46.5 cents per square foot.

It is interesting to note in this connection that Zelinski failed to mention probably the closest transaction to zone A of all of the 147 transactions listed in Government exhibit 128. This transaction is covered by his sale sheet no. 22 and shows a unit price of 35 cents per square foot. The

property covered by this transaction is immediately adjacent to appellant's sheep truck docks in the northeast corner of zone A.

It is quite evident that the Secretary, in fixing the unit value for zone A, has utterly disregarded these 15 transfers which are in the immediate vicinity of the zone because otherwise he would have arrived at a unit price of approximately 35 cents per square foot. It is quite evident that the Secretary disregarded the indisputable evidence and based his unit values for zone A upon his erroneous analysis of the sale of the Belt Railway.

If the *15 transfers which are in the immediate vicinity of zone A* are eliminated from the 23 transfers listed by Zelinski, there remain but 8. One of these, 53-A, Zelinski later stated that he disregarded (R. 534). This leaves but 7 of which 5 are adjacent to zone N. Zone N is somewhat removed from the main body of the stockyards, is vacant and devoted to farming. (Item 39, Government exhibit 107-A, certified in this case.) The character of the small portion of it which is used is best demonstrated by the fact that it is used for manure disposal. The record clearly shows that the land in the vicinity of zone N is from four to five feet lower than the land in zone A. (Respondent's (appellant's) exhibits 114 and 115, certified herewith.) The record further shows that the land in zone A had been filled in substantially that amount at the time the stockyards were originally constructed. (R. 625-632, 636-639, 587; respondent's exhibits 113 and 115). The record further shows that it would be necessary to fill zone N in substantially that amount if it were to be used for structures of the character and type of those found in zone A (R. 589). The record further shows that it would cost 18.5 cents per square foot to bring zone N to a level comparable to zone A (R. 589). These statements are absolutely undisputed in the record. The Secretary has found

that zone N has a value of 7 cents per square foot. If the additional 18.5 cents were added, this would make a value of 25.5 cents for zone A which is practically the unit value fixed by Spratt and slightly in excess of the average of the three appraisers.

The above comments respecting zone N refer to the 5 transfers which are listed as adjacent to zone N. They are referred to in paragraph 102 of the decision of the Secretary as being in the second and third groups. These two groups are on the southern and western borders of zone N. Transfer 10 lies between zone N and zone C.

The remaining two transfers considered by Zelinski, and by the Secretary, likewise are adjacent to other zones of appellant's property. Transfer 5 is immediately adjacent to zone C which the Secretary values at 10 cents per square foot. Transfer 5 was at 11.5 cents per square foot, and it is undisputed that the grantor owned all of capital stock of the grantee at the time of the transfer (R. 873). Transfer 6, together with others in that vicinity and referred to in paragraph 103 of the decision as the "Grain Belt Mills Sales", is adjacent to zones L and K and is substantially removed from zone A. None of the properties involved in these transfers are at all comparable to the property of appellant in zone A from the point of view of *accessibility, type of trackage,* and *possibilities of use* (R. 593-595, 525, 526, 528, 532, 534).

For the reasons stated, it is respectfully submitted that the land value determined for zone A by the Secretary in the present decision is, as alleged in the petition in the District Court, (1) unsupported by the evidence; (2) contrary to the weight of the evidence and to the indisputable character thereof; (3) arbitrary; and (4) confiscatory; and that the failure of the District Court so to find, together with its refusal to exercise its independent judgment upon the law and the facts, is reversible error.

XVI.

THE DISTRICT COURT ERRED IN ITS DECISION CONCERNING APPELLANT'S PETITION FOR REHEARING BEFORE THE SECRETARY.

That portion of the opinion of the District Court relating to appellant's petition to the Secretary to reopen this proceeding is found on pages 324 and 325 of 11 F. Supp., commencing on page 324 under the caption "I. Application to Reopen" and continuing through to the caption "II. Confiscatory Character of Rate Order" on page 325. The error of the District Court is specified in assignments of error nos. 1, 2, and 3 (R. 150-151) and is summarized in paragraph 1 of appellant's statement of points to be relied upon in this court. (R. 938).

Facts relating to petition to reopen. On February 2, 1934, appellant filed with the Secretary a petition entitled "Petition for Reopening and Further Hearing". A copy of this petition appears at pages 15-19, inclusive, of the record. The petition was denied in the decision of the Secretary entered May 4, 1934. Paragraphs 6c-6h of the decision (R. 26-29) are devoted to a discussion of said petition for rehearing, *and in it are incorporated certain findings of fact not taken from the record before the Secretary.* The record in this proceeding before the Secretary (hearing January 10-February 16, 1933, inclusive) ended with the result of appellant's operation for the year 1932. See decision of Secretary (R. 24-131, particularly "Other Expenses", par. 181, R. 120, par. 195, R. 123, and par. 203, R. 127). Nevertheless, upon receipt of appellant's petition for further hearing, the Secretary made an investigation of his own, as a result of which he made certain findings of fact in paragraphs 6c-6h, inclusive, of the decision

(R. 26-29). In paragraph 6e of the decision, the following statement is made by the Secretary:

> "Investigation has been made of the allegations in Paragraph II of respondent's petition respecting increases in respondent's operating expenses through increased compensation to its employees, brought about by the Governmental program for industrial recovery and through the recovery which has resulted from that program. This investigation consisted chiefly of ascertainment by accountants of the Department of Agriculture from respondent's records of the amounts expended as compensation to employees since the alleged increases and a comparison of these amounts with the allowances in the proposed order to cover such expenditures."

That this *ex parte* investigation by the Secretary was made over the protest of appellant appears in the following sentence also from paragraph 6e of the decision:

> "The investigation was made over the protest of respondent that to consider the result of it, without giving respondent opportunity to cross examine the Department's accountants and to present evidence on its own behalf, would deny to it the full hearing provided by the Packers and Stockyards Act, 1921, and would invade its constitutional rights."

Furthermore the court incorporated in its opinion certain of these *ex parte* findings made by the Secretary:

> "the result being that this court adopts the findings of facts made by the Secretary."
>
> 11 F. Supp., 322, at p. 338.

In the portion of its decision dealing with the petition for rehearing, the court also included one specific finding (p. 325) apparently based upon this *ex parte* investigation by the Secretary, reading as follows and covered by assignment of error no. 3:

> "As to the estimated effect of these rates if applied to 1933 business, the difference between the amount which is claimed would have been earned thereunder

and the amount found by the Secretary to constitute the reasonable net return is too small to be taken as a guide for a rate."

This finding of the court cannot be based upon anything other than the *ex parte* findings of the Secretary because no evidence was introduced in the hearing before the Secretary dealing with any period after the close of the calendar year 1932.

Error assigned with respect to petition for rehearing. The error assigned with respect to the petition for rehearing may be summarized under three points:

(1) By reason of the *ex parte* investigation of the Secretary and the incorporation into the report of facts known only to him, if indeed they are facts, appellant was deprived of its statutory and constitutional rights by reason of the fact that the Secretary, over the protest of counsel for appellant, proceeded to make findings of fact upon an *ex parte* investigation and to incorporate in his findings facts assumed to be known to him but not developed in a hearing.

(2) The District Court erred in adopting as its own such findings of the Secretary which, as stated in the decision of the Secretary, were made on an *ex parte* investigation by the Secretary's employees without affording appellant an opportunity to examine, cross-examine, explain, or rebut. Thus the Secretary and the District Court included certain fundamental and controlling findings of fact not supported by any legal evidence.

(3) The circumstances were such that the petition for rehearing should have been granted.

(a) A petition to the Secretary for rehearing or reopening was the only method open to appellant to show changed conditions, or impending changes, which would reduce appellant's business and therefore its revenue. *Tagg Bros. & Moorhead* v. *United States*, 280 U. S. 420, at pages 444-445, 74 L. ed. 524, at page 537.

(b) The Secretary might have allowed or denied the petition as he saw fit, but he had no right to make, nor did the District Court have the right to adopt, findings of fact adverse to appellant made upon an *ex parte* investigation wherein appellant was not permitted to appear, had no right to examine or cross-examine witnesses, or to explain or rebut the assumed facts gathered by employees of the Secretary. This was a violation of a fundamental right declared by this Court in many decisions under the *interstate commerce act.*

The point here presented was considered by this Court in *Interstate Commerce Com.* v. *Louisville & N. R. Co.*, 227 U. S. 88, 57 L. ed. 431. In that case, the Government insisted that the Commission could act upon information gathered in the general performance of its duties, even though such information was not incorporated in the record in the specific case before it, and that its findings must be presumed to have been supported by such information even though not formally proved at the hearing. This contention was condemned by the Court which said, at page 93:

> "But such a construction would nullify the right to a hearing,—for manifestly there is no hearing when the party does not know what evidence is offered or considered, and is not given an opportunity to test, explain, or refute. The information gathered under the provisions of § 12 may be used as basis for instituting prosecutions for violations of the law, and for many other purposes, but is not available, as such, in cases where the party is entitled to a hearing. * * * In such cases the Commissioners cannot act upon their own information, as could jurors in primitive days. All parties must be fully apprised of the evidence submitted or to be considered, and must be given opportunity to cross-examine witnesses, to inspect documents, and to offer evidence in explanation or rebuttal. In no other way can a party maintain its rights or make its defense. In no other way can it test the sufficiency of the

> facts to support the finding; for otherwise, even though it appeared that the order was without evidence, the manifest deficiency could always be explained on the theory that the Commission had before it extraneous, unknown, but presumptively sufficient information to support the finding."

This principle was restated in *Florida E. C. R. Co.* v. *United States,* 234 U. S. 167, 185, 58 L. ed. 1267, 1271.

Substantially the same rule was stated in different language in *Baltimore & O. R. Co.* v. *United States,* 264 U. S. 258, 265, 68 L. ed. 667, 674, as follows:

> "The provision for a hearing implies both the privilege of introducing evidence and the duty of deciding in accordance [illegible]. To refuse to consider evidence introduced, or to make an essential finding without supporting evidence, is arbitrary action."

The same rule was applied in setting aside an order of the Interstate Commerce Commission in *United States* v. *Abilene & S. R. Co.,* 265 U. S. 274, 68 L. ed. 1016.

To the same effect are *Crowell* v. *Benson,* 285 U. S. 22, 48, 76 L. ed. 598, 611, and *Southern R. Co.* v. *Virginia,* 290 U. S. 190, 195, 78 L. ed. 260, 264.

That this *ex parte* finding by the Secretary was prejudicial to appellant is very evident from the finding of the District Court quoted on pp. 177, 178.

(c) *The petition for further hearing should have been allowed.* By far the most important allegation set up in the petition for rehearing was that relating to the effect of the *agricultural adjustment act* (May 12, 1933, U. S. C. A. tit. 7, §§ 601-619) upon the receipts of live stock at all markets and at appellant's stockyards. Appellant's principal revenue is from yardage, that is, the charge for the receipt, handling, care, and custody of animals in its possession. In paragraph 208 of the Secretary's decision (R. 129), it is estimated that under the rates

prescribed by the Secretary the yardage charges would produce $412,775 out of a total gross revenue of $621,831. Of this yardage, the decision predicted that $150,250 would result from yardage on hogs (this estimate being based upon the Secretary's assumption that 1,206,250 hogs would be received by truck at a charge of 12 cents and 68,750 hogs would be received by rail at a charge of 8 cents, pars. 201 and 207 of Secretary's decision, R. 126, 128). The estimate of the Secretary (1,275,000 hogs) exceeded the actual receipts for 1932 (the last year covered by the hearing, see par. 195 of decision, R. 124) of 1,148,990, by 126,010 head of hogs. In other words, the order was based upon the prophecy by the Secretary that appellant's receipts of hogs, and consequently its yardage revenue therefrom, would increase.

But when the petition for further hearing was filed on February 2, 1934, the *agricultural adjustment act* had been in effect nearly a year. The purpose of that law was to reduce the production of hogs (and certain other agricultural products). At the time appellant's petition for rehearing was filed, the Secretary had announced his intention to reduce the production of hogs by 25 per cent. A bulletin was issued entitled "U. S. Department of Agriculture, Office of Information, Press Service, Washington, D. C., Agricultural Adjustment Administration, Release—Immediate, July 2, 1934, AAA Program Major Factor in Adjustment of Hog Numbers." This bulletin stated:

> "On the basis of the 1934 pig crop estimates, the hog slaughter under Federal inspection during the 1934-35 hog marketing year beginning next November is expected to be the smallest in many years and may be as small as it was in 1914-15 when it was 36.7 million head. Federally inspected hog slaughter during the 1932-33 marketing season was about 47 million head, one of the five largest totals on record."

These are facts which could have been proved in re-

buttal of the statement in the Secretary's decision (par. 6d, R. 27) that "these programs presently are experimental" if appellant had been offered an opportunity.

This coincidence of circumstances brought about the following very contradictory and inconsistent situation with respect to activities being carried on at one and the same time under the direction of the Secretary. When the Secretary entered the order in this case on May 4, 1934, he stated in paragraph 6d of the decision (R. 27) that "the programs for recovery * * * by controlling agricultural production * * * presently are experimental". But at the same time he was stating in other documents, such as those above mentioned, that the administration of the *agricultural adjustment act* had been so far successful that for the coming season the number of hogs marketed would be "the smallest in many years". The District Court says that the results of the administration of the *agricultural adjustment act* are "purely speculative". Certainly as to hog production that statement is contrary to common knowledge.

It is unfortunate that, due to the necessary lapse of time, the records in cases of this kind when they reach this Court always lag behind the march of events. The result under the *agricultural adjustment act* in the reduction of live stock receipts exceeded the predictions of the Secretary. We point to the following facts, not as evidence before this Court, but as showing what would now be proved if the case were reopened for further hearing. The results of appellant's operations for 1935 are shown below.

	Receipts Predicted by Secretary (Par. 201)	Received by appellant in 1935	Deficit below number predicted by Secretary
Cattle	400,000	354,780	45,220
Calves	85,000	99,448	* 14,448
Hogs	1,275,000	658,284	616,716
Sheep	1,200,000	994,076	205,924

* Excess

	Other estimates by Secretary.	Actual revenue in 1935 at rates prescribed by Secretary.	Deficit.
Resale charge	$ 25,775	$ 5,424.53	$ 20,350.47
Feed lot yardage	35,984	23,140.20	12,843.80
Feed profit	82,800	67,709.28	15,090.72
Loading and unloading charges	22,500	16,401.25	6,098.75
Miscellaneous charges	68,000	56,065.59	11,934.41
Yardage	375,000	276,833.83	98,166.17
			$164,484.32

Results for 1935.

Minimum fair return determined by Secretary (par. 171, R. 116) $192,010.00

Actual net return in 1935, using only expenses allowed by Secretary, including depreciation reserve of $41,500, under appellant's *present rates* 90,324.53

Deficit below fair return determined by Secretary 101,685.47

Actual net return in 1935 *if rates prescribed by Secretary had been in effect* 54,789.91

Deficit below fair return in 1935 if rates prescribed by Secretary had been in effect.... 137,220.09

Rate of return under *present* rates in 1935 on fair value fixed by Secretary ($90,324.53 ÷ $2,743,000, par. 161, R. 112) ..... 3.29 per cent

Rate of return in 1935 if rates prescribed by Secretary had been in effect ($54,789.91 ÷ $2,743,000) ..... 1.99 per cent

It would indeed be a strange miscarriage of justice if, under these conditions, appellant were now required to

establish the rates prescribed by the Secretary and to refund all of the charges in excess of the prescribed rates since the date of the Secretary's order. The result would be, under the bond in this Court, that during a year (1935) when appellant's net operating income was only 3.29 per cent under its present rates upon the value determined by the Secretary and would have been only 1.99 per cent under the rates prescribed by the Secretary, a refund approximating $200,000 would have to be made to the patrons of the yards *upon the theory that the return had actually exceeded 7 per cent upon the fair value determined by the Secretary.*

This situation, as pertains to appellant's receipts of live stock and revenue, is not changed by the decision of this Court of January 6, 1936, in *United States* v. *Butler*, ... U. S. ....., 80 L. ed. (Adv. Ops.) 287. For 1935, the result sought under the *agricultural adjustment act* is an accomplished fact. Other legislation to the same end is being considered. In any event it would be several years before live stock production could return to normal. It will be time enough to order a reduction in appellant's charges after it is earning, if ever, something above a confiscatory return on the minimum value which may be determined for its property.

It is respectfully submitted that the petition for rehearing should have been granted; and that, if upon the points already raised this court does not decide that the decree of the District Court should be reversed, this court should at least require the case to be reopened and the bond to be discharged in order to afford appellant an opportunity to show that the rates prescribed by the Secretary, confiscatory when made, would be even more confiscatory at the present time.

CONCLUSION.

Because of the errors of fact and law to which the attention of this Court has been called, the decision and decree of the District Court should be reversed.

Respectfully submitted,

WILLIAM N. STRACK,
ROSS DEAN RYNDER,
Attorneys for appellant.

January, 1936.

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1935.

No. 497

ST. JOSEPH STOCK YARDS COMPANY,
Appellant,

v.

UNITED STATES OF AMERICA AND SECRETARY OF AGRICULTURE,
Appellees.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF MISSOURI, ST. JOSEPH DIVISION.

APPENDIX TO APPELLANT'S BRIEF.

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Attorneys for Appellant.

January, 1936.

THE BLAKEMORE-WARREN PRINTING COMPANY, 310 WEST JACKSON, CHICAGO

INDEX.

	Page
Packers and Stockyards Act, 1921	1
§ 201. "Stockyard owner"; "stockyard services"; "market agency"; "dealer"; defined	1
§ 202. "Stockyard" defined; determination by Secretary as to particular yard	2
§ 205. General duty as to services	2
§ 206. Rates and charges generally; discrimination	2
§ 208. Unreasonable or discriminatory practices generally	3
§ 210. Proceedings before Secretary for violations generally; action to enforce order of Secretary	3
§ 211. Order of Secretary as to charges or practices; prescribing rates and practices generally	3
§ 214. When orders effective generally	4
§ 215. Failure to obey orders generally; punishment	4
§ 217. Proceedings for suspension of orders	5
U. S. C. A. tit. 28, §§ 1 to 70	5
§ 43. Venue of suits relating to orders of Interstate Commerce Commission	5
§ 44. Procedure in certain cases under interstate commerce laws; service of processes of court	5
§ 45. (Judicial Code, section 209.) District courts; practice and procedure in certain cases	6
§ 46. (Judicial Code, section 208.) Suits to enjoin orders of Interstate Commerce Commission to be against United States	7
§ 47. Injunctions as to orders of Interstate Commerce Commission; appeal to Supreme Court; time for taking	7
§ 47a. (Judicial Code, section 210.) Appeal to Supreme Court from final decree; time for taking; priority	8

Decision of Secretary of July 20, 1931 in docket No. 298, Secretary of Agriculture v. St. Joseph Stock Yards Company 10
Proceedings 10
The Services Rendered by Respondent and the Rates Charged Therefor 11
Used and Useful Character of Respondent's Property 23
Land 23
Zone A 24
Land for Expansion 25
Livestock Feeding Lots 27
Meter House 30
Zone B 30
Zone C 31
Zone D 32
Zone E 32
Zone F 32
Zone Red-N 33
Zone 1 33
Harness Shop and Stockyard Journal 33
Transit House Hotel 34
Zone 2 35
Summary of Used and Useful Land 35
Structures 36
Foot Subway 36
Valuation 38
Used and Useful Land 38
Zone A 38
Zone C 38
Zone Red-N 38
Zone 1 39
Used and Useful Structures 39
Cost of Reproduction New 39
Pre-Construction Overheads 41
Cost of Reproduction New, Less Depreciation 43
Depreciation of General Overheads 45

Working Capital 46
Going Concern Value 46
Fair Value 50
Fair Rate of Return 50
Income and Expenses 51
Income 51
Expenses 53
Repairs, Maintenance, and Reserve for Depreciation 53
Other Expenses 56
Respondent's Existing Rates and Charges Are Unreasonable and Unjustly Discriminatory 58
Volume of Business Reasonably to Be Anticipated in the Near Future 59
Rate Structure 59
Reasonable Rates 61
Order 62

Extract from Testimony of John J. Bachmann, in Charge of Audits and Accounts, Packers and Stockyards Division, Department of Agriculture (Record, pp. 573-575) 64
Income for Rate-Making Purposes 64
Income 1932 64
Expenses 1932 65

Allegation Concerning Going Concern Value Determined by Secretary in First Decision of July 20, 1931, Contained in Appellant's Petition to Enjoin Said Decision and Order 67
Answer of United States and Secretary of Agriculture to Said Allegation in Appellant's Said Petition 68

Extract from Decision of Secretary in Docket No. 301, Secretary of Agriculture v. Denver Union Stock Yard Company, relating to Going Concern Value ... 69

Extract from Decision of Secretary in Docket No. 344, Secretary of Agriculture v. Union Stock Yards Company of Omaha, Ltd., relating to Going Concern Value 72

Abstract from Testimony of Government Engineer, Hermann C. Henrici, Record 429-435..... 75

Depreciation and Composite Life Tables..... 75

Government Exhibit No. 114..... 78

Restatement of Major Items in Government Exhibit 114, Grouping Property of Same Estimated Life 80

Extract from Decision of Interstate Commerce Commission in Telephone and Railroad Depreciation Charges, 118 I. C. C. 295, at Pages 353-356, Inc..... 81

Extract from Decision of Interstate Commerce Commission in Telephone and Railroad Depreciation Charges, 177 I. C. C. 351, at Pages 408, 409, 410, 412, 413 84

Sketch Illustrating Zones and Transfers Discussed in that Portion of Brief Relating to Land Values in Zone A 88

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STATUTES INVOLVED.

The pertinent provisions of the *Packers and Stockyards Act, 1921,* (U. S. C. A. tit. 7, secs. 181-229) are as follows:

§201. **"Stockyard owner"; "stockyard services"; "market agency"; "dealer"; defined.** When used in this chapter—

(a) The term "stockyard owner" means any person engaged in the business of conducting or operating a stockyard;

(b) The term "stockyard services" means services or facilities furnished at a stockyard in connection with the receiving, buying or selling on a commission basis or otherwise, marketing, feeding, watering,

holding, delivery, shipment, weighing, or handling in commerce, of livestock; (Aug. 15, 1921, c. 64, §301, 42 Stat. 163.)

§202. "Stockyard" defined; determination by Secretary as to particular yard. (a) When used in sections 201 to 217, inclusive, of this chapter the term "stockyard" means any place, establishment, or facility commonly known as stockyards, conducted or operated for compensation or profit as a public market, consisting of pens, or other inclosures, and their appurtenances, in which live cattle, sheep, swine, horses, mules, or goats are received, held, or kept for sale or shipment in commerce. Sections 201 to 217 inclusive of this chapter shall not apply to a stockyard of which the area normally available for handling livestock, exclusive of runs, alleys, or passage ways, is less than twenty thousand square feet. (Aug. 15, 1921, c. 64, §302, 42 Stat. 163.)

§205. General duty as to services. It shall be the duty of every stockyard owner and market agency to furnish upon reasonable request, without discrimination, reasonable stockyard services at such stockyard: *Provided,* That in any State where the weighing of livestock at a stockyard is conducted by a duly authorized department or agency of the State, the Secretary, upon application of such department or agency, may register it as a market agency for the weighing of livestock received in such stockyard, and upon such registration such department or agency and the members thereof shall be amenable to all the requirements of this chapter; and upon failure of such department or agency or the members thereof to comply with the orders of the Secretary under this chapter he is authorized to revoke the registration of such department or agency and to enforce such revocation as provided in section 216 of this title. (As amended May 5, 1926, c. 240, 44 Stat. 397.)

§206. Rates and charges generally; discrimination. All rates or charges made for any stockyard services furnished at a stockyard by a stockyard owner or market agency shall be just, reasonable, and nondiscriminatory, and any unjust, unreasonable, or discriminatory rate or charge is prohibited and declared to be unlawful. (Aug. 15, 1921, c. 64, §305, 42 Stat. 164.)

§208. Unreasonable or discriminatory practices generally. It shall be the duty of every stockyard owner and market agency to establish, observe, and enforce just, reasonable, and nondiscriminatory regulations and practices in respect to the furnishing of stockyard services, and every unjust, unreasonable, or discriminatory regulation or practice is prohibited and declared to be unlawful (Aug. 15, 1921, c. 64, §307, 42 Stat. 165.)

§210. Proceedings before Secretary for violations generally; action to enforce order of Secretary. (c) The Secretary may at any time institute an inquiry on his own motion, in any case and as to any matter or thing concerning which a complaint is authorized to be made to or before the Secretary, by any provision of sections 201 to 217 inclusive of this chapter, or concerning which any question may arise under any of the provisions of sections 201 to 217 inclusive of this chapter, or relating to the enforcement of any of the provisions of sections 201 to 217 inclusive of this chapter. The Secretary shall have the same power and authority to proceed with any inquiry instituted upon his own motion as though he had been appealed to by petition, including the power to make and enforce any order or orders in the case or relating to the matter or thing concerning which the inquiry is had, except orders for the payment of money. (Aug. 15, 1921, c. 64, §309, 42 Stat. 165.)

§211. Order of Secretary as to charges or practices; prescribing rates and practices generally. Whenever after full hearing upon a complaint made as provided in section 210 of this chapter, or after full hearing under an order for investigation and hearing made by the Secretary on his own initiative, either in extension of any pending complaint or without any complaint whatever, the Secretary is of the opinion that any rate, charge, regulation, or practice of a stockyard owner or market agency, for or in connection with the furnishing of stockyard services, is or will be unjust, unreasonable, or discriminatory, the Secretary—

(a) May determine and prescribe what will be the just and reasonable rate or charge, or rates or charges, to be thereafter observed in such case, or the maximum or minimum, or maximum and minimum, to be charged,

and what regulation or practice is or will be just, reasonable, and nondiscriminatory to be thereafter followed; and

(b) May make an order that such owner or operator (1) shall cease and desist from such violation to the extent to which the Secretary finds that it does or will exist; (2) shall not thereafter publish, demand, or collect any rate or charge for the furnishing of stockyard services other than the rate or charge so prescribed, or in excess of the maximum or less than the minimum so prescribed, as the case may be; and (3) shall conform to and observe the regulation or practice so prescribed. (Aug. 15, 1921, c. 64, §310, 42 Stat. 166.)

§214. When orders effective generally. Except as otherwise provided in this chapter all orders of the Secretary under sections 201 to 217 inclusive of this chapter, other than orders for the payment of money, shall take effect within such reasonable time not less than five days, as is prescribed in the order, and shall continue in force until his further order, or for a specified period of time, according as is prescribed in the order, unless such order is suspended or modified or set aside by the Secretary or is suspended or set aside by a court of competent jurisdiction. (Aug. 15, 1921, c. 64, §313, 42 Stat. 167.)

§215. Failure to obey orders generally; punishment. (a) Any stockyard owner, market agency, or dealer who knowingly fails to obey any order made under the provisions of sections 211, 212, or 213 of this chapter shall forfeit to the United States the sum of $500 for each offense. Each distinct violation shall be a separate offense, and in case of a continuing violation each day shall be deemed a separate offense. Such forfeiture shall be recoverable in a civil suit in the name of the United States.

(b) It shall be the duty of the various district attorneys, under the direction of the Attorney General, to prosecute for the recovery of forfeitures. The costs and expense of such prosecution shall be paid out of the appropriation for the expenses of the courts of the United States. (Aug. 15, 1921, c. 64, §314, 42 Stat. 167.)

§217. Proceedings for suspension of orders. For the purposes of sections 201 to 217 inclusive of this chapter, the provisions of all laws relating to the suspending or restraining the enforcement, operation, or execution of, or the setting aside in whole or in part the orders of the Interstate Commerce Commission, are made applicable to the jurisdiction, powers, and duties of the Secretary in enforcing the provisions of sections 201 to 217 inclusive of this chapter, and to any person subject to the provisions of sections 201 to 217 inclusive of this chapter. (Aug. 15, 1921, c. 64, §316, 42 Stat. 168.)

The provisions of law with respect to petitions seeking to suspend or enjoin orders of the Interstate Commerce Commission, made applicable to orders of the Secretary of Agriculture under section 217 above quoted, are contained in the sections (U. S. C., A. tit. 28, §§1 to 70) quoted below:

§43. Venue of suits relating to orders of Interstate Commerce Commission. The venue of any suit brought to enforce, suspend, or set aside, in whole or in part, any order of the Interstate Commerce Commission shall be in the judicial district wherein is the residence of the party or any of the parties upon whose petition the order was made, except that where the order does not relate to transportation or is not made upon the petition of any party the venue shall be in the district where the matter complained of in the petition before the commission arises, and except that where the order does not relate either to transportation or to a matter so complained of before the commission the matter covered by the order shall be deemed to arise in the district where one of the petitioners in court has either its principal office or its principal operating office. In case such transportation relates to a through shipment the term "destination" shall be construed as meaning final destination of such shipment. (Oct. 22, 1913, c. 32, 38 Stat. 219.)

§44. Procedure in certain cases under interstate commerce laws; service of processes of court. The procedure in the district courts (a) in respect to cases for the enforcement, otherwise than by adjudication

and collection of a forfeiture or penalty or by infliction of criminal punishment, of any order of the Interstate Commerce Commission other than for the payment of money shall be as provided in sections 45, 45a, 47a, and 48 of this title and (b) in respect to cases brought to enjoin, set aside, annul, or suspend in whole or in part any order of the Interstate Commerce Commission shall be as provided in sections 45, 45a, 46, 47, 47a and 48 of this title. The orders, writs, and processes of the district courts may in the cases specified in this section and in the cases and proceedings under sections 20, 43 and 49 of Title 49, run, be served, and be returnable anywhere in the United States. (Oct. 22, 1913, c. 32, 38 Stat. 220.)

§45. (Judicial Code, section 209.) District courts; practice and procedure in certain cases. The jurisdiction of the district courts of the cases specified in section 44 of this title, and of the cases and proceedings under sections 20, 43 and 49 of Title 49, shall be invoked by filing in the office of the clerk of the court a written petition setting forth briefly and succinctly the facts constituting the petitioner's cause of action, and specifying the relief sought. A copy of such petition shall be forthwith served by the marshal or a deputy marshal of the district court or by the proper United States marshal or deputy marshal upon every defendant therein named, and when the United States is a party defendant, the service shall be made by filing a copy of said petition in the office of the Secretary of the Interstate Commerce Commission and in the Department of Justice. Within thirty days after the petition is served, unless that time is extended by order of the court or a judge thereof, an answer to the petition shall be filed in the clerk's office and a copy thereof mailed to the petitioner's attorney, which answer shall briefly and categorically respond to the allegations of the petition. No replication need be filed to the answer, and objections to the sufficiency of the petition or answer as not setting forth a cause of action or defense must be taken at the final hearing or by motion to dismiss the petition based on said grounds, which motion may be made at any time before answer is filed. In case no answer shall be filed as provided herein the petitioner may apply to the court on notice for such relief as may be proper upon the facts alleged

in the petition. The court may, by rule, prescribe the method of taking evidence in cases pending in said court. (June 18, 1910, c. 309, §1, 36 Stat. 539; Mar. 3, 1911, c. 231, §209, 36 Stat. 1149; Oct. 22, 1913, c. 32, 38 Stat. 219.)

§46. (Judicial Code, section 208.) Suits to enjoin orders of Interstate Commerce Commission to be against United States. Suits to enjoin, set aside, annul, or suspend any order of the Interstate Commerce Commission shall be brought in the district court against the United States. The pendency of such suit shall not of itself stay or suspend the operation of the order of the Interstate Commerce Commission; but the court, in its discretion, may restrain or suspend, in whole or in part, the operation of the commission's order pending the final hearing and determination of the suit. (June 18, 1910, c. 309, §3, 36 Stat. 542; Mar. 3, 1911, c. 231, §208, 36 Stat. 1149; Oct. 22, 1913, c. 32, 38 Stat. 219.)

§47. Injunctions as to orders of Interstate Commerce Commission; appeal to Supreme Court; time for taking. No interlocutory injunction suspending or restraining the enforcement, operation, or execution of, or setting aside, in whole or in part, any order made or entered by the Interstate Commerce Commission shall be issued or granted by any district court of the United States, or by any judge thereof, or by any circuit judge acting as district judge, unless the application for the same shall be presented to a circuit or district judge, and shall be heard and determined by three judges, of whom at least one shall be a circuit judge, and unless a majority of said three judges shall concur in granting such application. When such application as aforesaid is presented to a judge, he shall immediately call to his assistance to hear and determine the application two other judges. Said application shall not be heard or determined before at least five days' notice of the hearing has been given to the Interstate Commerce Commission, to the Attorney General of the United States, and to such other persons as may be defendants in the suit: Provided, That in cases where irreparable damage would otherwise ensue to the petitioner, a majority of said three judges concurring, may, on hearing, after not less than three days' notice to the Interstate Commerce Commission

and the Attorney General, allow a temporary stay or suspension, in whole or in part, of the operation of the order of the Interstate Commerce Commission for not more than sixty days from the date of the order of said judges pending the application for the order or injunction, in which case the said order shall contain a specific finding, based upon evidence submitted to the judges making the order and identified by reference thereto, that such irreparable damage would result to the petitioner and specifying the nature of the damage. The said judges may, at the time of hearing such application, upon a like finding, continue the temporary stay or suspension in whole or in part until decision upon the application. The hearing upon such application for an interlocutory injunction shall be given precedence and shall be in every way expedited and be assigned for a hearing at the earliest practicable day after the expiration of the notice hereinbefore provided for. An appeal may be taken direct to the Supreme Court of the United States from the order granting or denying, after notice and hearing, an interlocutory injunction, in such case if such appeal be taken within thirty days after the order, in respect to which complaint is made, is granted or refused; and upon the final hearing of any suit brought to suspend or set aside, in whole or in part, any order of said commission the same requirement as to judges and the same procedure as to expedition and appeal shall apply. (Oct. 22, 1913, c. 32, 38 Stat. 220.)

§47a. (Judicial Code, section 210.) Appeal to Supreme Court from final decree; time for taking; priority. A final judgment or decree of the district court in the cases specified in section 44 of this title may be reviewed by the Supreme Court of the United States if appeal to the Supreme Court be taken by an aggrieved party within sixty days after the entry of such final judgment or decree, and such appeals may be taken in like manner as appeals are taken under existing law in equity cases. And in such cases the notice required shall be served upon the defendants in the case and upon the attorney general of the State. The district court may direct the original record instead of a transcript thereof to be transmitted on appeal. The Supreme Court may affirm, reverse, or modify as

the case may require the final judgment or decree of the district court in the cases specified in section 44 of this title. Appeal to the Supreme Court, however, shall in no case supersede or stay the judgment or decree of the district court appealed from, unless the Supreme Court or a justice thereof shall so direct, and appellant shall give bond in such form and of such amount as the Supreme Court, or the justice of that court allowing the stay, may require. Appeals to the Supreme Court under this section and section 47 of this title shall have priority in hearing and determination over all other causes except criminal causes in that court. (Mar. 3, 1911, c. 231, §210, 36 Stat. 1150; Oct. 22, 1913, c. 32, 38 Stat. 220.)

FIRST DECISION OF THE SECRETARY.

UNITED STATES OF AMERICA

BEFORE THE SECRETARY OF AGRICULTURE

BUREAU OF ANIMAL INDUSTRY

Docket No. 298.

Secretary of Agriculture
v.
St. Joseph Stockyards Company, Respondent

} Findings Conclusions and Order

I

PROCEEDINGS.

1. This proceeding is a general inquiry under the Packers and Stockyards Act, 1921, as amended, into the reasonableness and lawfulness of the rates and charges of respondent for the stockyard services rendered by it at its stockyard at South St. Joseph, Missouri.

2. The proceeding was initiated by an order of inquiry and notice of hearing issued by the Acting Secretary of Agriculture on October 9, 1929. Said order and notice alleged that respondent was engaged in the business of conducting or operating a stockyard at South St. Joseph, Missouri, which had been ascertained by the Secretary of Agriculture to be a "stockyard" within the definition thereof as used in Title III of the Packers and Stockyards Act, 1921, as amended, and which had been posted as such; that, in accordance with the requirements of said Act, respondent had theretofore filed and put into effect schedules of rates and charges for its services as a stockyard owner; that on September 30, 1929, respondent made and published Tariff No. 5, which was filed with the Bureau of Animal Industry to become effective October 10, 1929; and that a proceeding under Title III of the Packers and Stockyards Act, 1921, as amended, should be had for the purpose of determining the reasonableness and lawfulness of said schedule of rates and charges as set out in Tariff No. 5. Accordingly, it was ordered that a hearing upon the reasonableness and lawfulness of said rates and charges be held at a time and place

specified in said order and notice. Notice of such hearing was given to respondent by serving upon it a copy of said order and notice.

3. Pursuant to the aforesaid order and notice, a hearing was held at St. Joseph, Missouri, before an examiner designated by the Secretary of Agriculture, which hearing began on the 2nd day of December, 1929, and was concluded on the 17th day thereof. Respondent was present by counsel throughout the hearing. Oral argument was had before the Acting Secretary of Agriculture, on the 13th and 14th day of May, 1930, and respondent submitted a brief. The matter is now before me for decision.

4. On February 11, 1931, respondent filed in this proceeding a petition praying that, for the reasons therein stated, an order be entered re-opening this proceeding and that this proceeding be set down for further hearing on the matters stated in the petition.

THE SERVICES RENDERED BY RESPONDENT AND THE RATES CHARGED THEREFOR.

5. There exists at St. Joseph, Missouri, a livestock market occasioned by the custom of producers and others who have meat, and to some extent, draft animals to dispose of, to ship them either by rail or truck to that place to be offered for sale to the various classes of buyers who congregate there. Chiefly such buyers comprise (1) local packers, whose plants are located at St. Joseph; (2) local butchers, who cater principally, if not exclusively, to the local demand for dressed meats and meat products; (3) order buyers, who purchase for packers located at points other than St. Joseph and for feeders and finishers of livestock; (4) dealers or traders, who purchase on their own account and usually for the purpose of selling at a profit without slaughtering or fattening or finishing to any considerable extent; and (5) the feeders and finishers, some of whom operate, either within or nearby the property of respondent, facilities known as feed lots, feed yards or feed barns and others of whom take the livestock to their farms for the feeding and finishing. The activities conducted by or through these various classes of purchasers are, when considered collectively, usually denominated "the buying power of the market."

6. The producers and others shipping livestock to market for sale generally, though not always, operate through

agents known as "commission men." The sellers and their agent are usually spoken of collectively as "the selling side of the market."

7. Respondent, the St. Joseph Stock Yards Company, provides the physical facilities which constitute the market place and renders certain services, hereinafter more fully described, in connection with the livestock which (other than livestock fed in transit and direct shipments to packers and feeders) comes there primarily to be marketed and only secondarily to be warehoused, fed, watered and otherwise attended to.

8. Respondent, in common with others interested in the market, has encouraged and promoted its development. Respondent's contribution has been chiefly in assisting the strengthening of the buying power of the market through aid in bringing in additional buyers. It also has expended considerable effort in inducing additional shipments to the market by those who have livestock to sell.

9. Respondent's specific functions are threefold. First, the provision of a market place; second, the provision of a depot for the unloading and loading of livestock brought to the market by railroads and by motor trucks or other vehicles; and third, the warehousing of the livestock so brought to market.

10. Incidental to its furnishing of a market place, respondent provides two office buildings within the stockyard area in which buildings the various classes of buyers and the representatives of the sellers can and largely do have offices for the transaction of their businesses. The actual buying and selling of livestock is not, however, done in these buildings but in the yards among the pens where the animals are held. There are, of course, other tenants in these office buildings, such as insurance companies, the inspectors of brands of cattle, feed concerns, a bank, and representatives of the United States Government. Respondent also has its offices in one of the buildings. The larger of these buildings is known as the Exchange Building and the smaller as the Annex.

11. Respondent's function as a livestock depot requires it to provide (1) docks for loading and unloading, which are long narrow platforms adjacent to and parallel with the tracks of the St. Joseph Belt Railway Company and raised to a height practically level with the floors of stand-

ard livestock cars; (2) chutes, which are inclined walkways for livestock leading down from the aforesaid docks; (3) chute pens, which are fenced enclosures into which the above described chutes lead and which are used to hold the livestock until it can be driven to the pens called "sales pens," where it is warehoused by respondent and exhibited for sale by the owner or his representative; (4) an alley, which is a narrow, paved drive-way used in driving the livestock from the "chute pens" to the "sales pens;" and (5) a similar arrangement of docks at the level of truck floors as well as chutes, pens, and an alley for unloading livestock brought to the stockyard by truck and for loading animals dispatched therefrom by the same mode of conveyance.

12. That portion of respondent's property which is devoted to its function of warehousing livestock is reminiscent of a city for human habitation in that mostly it is divided into blocks surrounded by paved runways, called "alleys;" and the blocks are divided into fenced and paved pens designed to keep separate the livestock of different owners. Collectively the pens devoted to the warehousing of a single species of livestock are called a "division." There also are "divisions" within "divisions." For example, the "cattle division" is divided into the "commisson dvision," wherein the livestock of the "original shippers" is warehoused, and the "traders division," wherein livestock which has been purchased by the traders or dealers and is being held for resale by them is warehoused by respondent. The hog and sheep divisions are roofed, but the cattle division is open or unroofed. Again like a city there are certain conveniences, such as an elaborate system of sewers for draining the pens, a water system providing running water to a trough in each pen, a system of electric wiring and fixtures for lighting the pens, alleys, etc.; a feeding and bedding service, requiring storage barns for hay feeds, and bedding, elevators for grain feeds, feed carts and horses or tractors, feed bins, feed racks or mangers, etc.; manure disposal, requiring horses and carts or tractors and trailers and a small plot of ground without the stockyard as a place whereat to dump the manure in a public sewer; what may be termed a "health service" employing an immunizing plant whereat hogs sold in the yard for shipment to the country for stocking or feeding purposes are immunized against certain diseases; dipping vats wherein cattle and sheep are immersed in solutions which

rid them of certain skin diseases and parasites; and some other "services" of a more minor nature.

13. In the foregoing description the facilities used by respondent in the performance of each of its several functions have been allocated in a general way to the respective function as to which they chiefly are employed. However, there is no clear, sharp line of demarcation. For instance, certain portions of the Exchange Building and its Annex may be devoted from time to time to uses partaking more of the warehousing function than that of providing a market place, the alley assigned to the livestock depot function is also used in connection with the warehousing function, certain pens usually associated with warehousing are used at times in performing the livestock depot function and parts of the facilities devoted to the sewer, water, light, feeding and bedding, manure disposal, and health "services" serve jointly in the performance of all three functions.

14. Respondent's stockyard is surrounded by the tracks of the St. Joseph Belt Railway Company, a corporation which, at the time of the hearing, was a subsidiary of the respondent. Over its tracks the livestock which comes to St. Joseph by way of the various trunk line railroads is brought to the unloading docks above described. There respondent, acting as servant of the trunk line or line haul carrier, unloads it over the unloading docks, down the chutes and into the chute pens. This service is performed under contract with the railroads and for it respondent receives from the respective railroads one dollar per car.

15. Respondent assumes responsibility for driving livestock from the chute pens to the sales pens of the respective consignees and placing it therein. This operation is frequently designated "yarding the livestock." However, there is a verbal agreement between respondent and the "commission men," who are the usual consignees of the livestock, that the latter will "yard" all livestock consigned to them which arrives after the hour of seven a. m. The "commission men" make no charge to respondent for so doing. The record indicates that the "commission men" do not always yard such livestock. The greater volume of the livestock arrives before the hour of seven a. m., hence, respondent actually does the greater part of the "yarding" of livestock which arrives by rail. The greater part of that arriving as so-called "drive-ins" appears, how-

ever, to be yarded by the consignee. Tests made of a week in January in the years 1927, 1928, and 1929, respectively, show that in 1927 77.64%, in 1928 59.6% and in 1929 61.3% of the livestock arriving by rail was yarded by respondent, while for 1928 18.9% and for 1929 29.5% of the driven-in livestock was so yarded. There is no showing as to the amount of driven-in livestock yarded by respondent in the year 1927.

16. When the livestock is placed in the sales pens the consignee or his agent, the commission man, usually the latter, takes charge of it, orders feed for it, sorts it, shows it to prospective purchasers, sells it, and drives it to the scales maintained by respondent, where it is weighed by respondent. By the custom of the market, title to the livestock passes to the purchaser when the animals are driven off the scales. The charges of the commission men for these and other services rendered their principals are, under the law, subject to regulation by the Secretary of Agriculture.

17. For the services rendered by respondent in warehousing the livestock from the time it leaves the railroad chute pens or is received at the drive-in division, until it is driven off the scales, including such driving as is done by respondent, the counting, checking, and keeping record of the number and identity of the livestock in each consignment, the furnishing of water, and the weighing, respondent charges to the owner of the livestock who brought, or caused it to be brought to market, usually called the "original shipper," the following rates:

Cattle	35c per head.
Calves (cattle weighing 400 lbs., or less)	25c per head.
Hogs	12c per head.
Sheep and goats	8c per head.
Horses and mules	35c per head.

In addition to the above yardage charges, which apply whether the livestock comes to the stockyard by rail, on foot, or in vehicle, a charge, stated in respondent's schedule to be for the use of special facilities, is assessed against all livestock received in vehicles, such as automobile trucks and wagons, as follows:

Cattle	5c per head.
Calves	2c per head.
Hogs	2c per head.
Sheep and goats	2c per head.
Horses and mules	5c per head.

The above stated charges, usually designated "yardage charges" are considered as covering the warehousing of the livestock throughout its stay in the stockyards regardless of the duration thereof or the number of changes of ownership which occur, the exception being that on livestock resold in the commission division one-half of the above rates additional is charged.

18. Dealers or traders and others who have purchased livestock in the stockyard sometimes place it with a "commission man" to be resold. Such livestock is said to be "planted" and sometimes it is referred to as "seconds." When such livestock is resold, respondent charges to the vender thereof the one-half rates mentioned in the preceding paragraph. No such charge is imposed when the dealer or other owner resells, without the intervention of a "commission man," livestock which he has purchased in the stockyard.

19. When livestock comes to the market and, for any of a number of reasons, is forwarded or driven to the country without being sold or weighed no yardage charge is imposed.

20. Some livestock comes to the stockyard consigned directly to packers and other users under circumstances such that it is not sold in the stockyard. The yardage charges detailed above are assessed against this livestock and imposed upon the person who causes it to come to the stockyard.

21. It is evident that the theory upon which the schedule of rates and charges is constructed is that whosoever causes livestock to come to the stockyard shall pay yardage charges, which are in effect an entrance fee and that thereafter no further yardage charges should be imposed, except in case of livestock resold in the commission division. Inasmuch as the producer of livestock either directly or through the country livestock buyer, causes the great bulk of the livestock to come to the stockyard, the burden of maintenance of the stockyard properties and services through the payment of yardage charges falls most heavily upon him.

22. When the livestock has been weighed and title has passed from the original shipper, as hereinbefore described, the nature of its further handling by respondent depends upon the class of purchaser who has acquired it.

23. If the purchaser be a local packer, the livestock is driven by respondent from the scales to a section of the cattle, hog, or sheep division of the stockyard, as the case may be, known as the "packers holding pens." There it is held in respondent's custody until such time as the packer who purchased it takes delivery of it and drives it out of the stockyard. These "packer holding pens" are approximately similar in physical characteristics to the so-called "commission division" where the "original shipper's" livestock is yarded, and practically the same services are rendered by respondent in connection with the livestock in the one as in the other, except that that in the "packers holding pens" is not usually fed or weighed. No charge is made to the packer for these services or the use of these facilities in connection with livestock which he has purchased in the stockyard.

24. If the purchaser be a dealer or trader, the livestock is driven by respondent, in most instances, to and yarded in pens allotted to the purchaser in those respective sections of the cattle, hog, and sheep divisions which are known as the "traders divisions." The physical characteristics of the "traders divisions" are substantially the same as those of the "commission divisions" and the services rendered by respondent with respect to the livestock warehoused in each do not differ materially. The livestock is held in the "traders divisions" until the trader sells or otherwise disposes of it. There respondent furnishes feed and water to it, making a charge for the former but not for the latter. There the trader shows it to prospective purchasers and usually sells it. Thence the trader drives it to the scales where it is weighed by respondent. For the use of these facilities and for these services respondent makes no charge to the trader.

25. If the purchaser be an "outside packer," as those packers who are not located at St. Joseph are designated, or a feeder, finisher, or breeder of livestock who is not located at or near the stockyard, the livestock is driven to the "shipping division" adjacent to the loading docks and there held until all things are in readiness for its loading out. Such loading is done by respondent in performance of its livestock depot function and for it respondent receives one dollar per car from the line haul carrier involved. For the driving to the holding pens and the use of those facilities respondent neither makes any charge or

receives any compensation other than the original yardage charge paid by the "original shipper."

26. The foregoing applies to livestock purchased to be shipped out by rail. That to be trucked out, either to a purchaser outside of St. Joseph or to a packer or butcher located in that city but not immediately adjacent to the stockyard, is driven to the truck-in division for the species involved and there held for the truck driver employed by the purchaser who, usually with respondent's assistance, loads it onto a truck.

27. If the livestock be purchased by or for the operator of a feed lot or barn adjacent to the stockyard it is driven from the scales to the purchaser's feed lot or barn either by respondent or the purchaser.

28. The service of driving livestock from the scales where it has been weighed to the point where it is to be loaded-out or delivered to the purchaser may be designated "re-yarding." Considering the operation as a whole, most of the re-yarding is done by respondent. Tests of a week in January in the years 1927 and 1928 show that in the former 89% and in the latter 92% of all re-yarding was done by respondent.

29. Hereinafter there is found a total area of 2,911,079 square feet as the used and useful land of respondent. On this area are situated nearly all of respondent's structures which are found to be used and useful. Of this total area 742,361 square feet, and the structures thereon, are directly and exclusively devoted to yarding livestock for the "original shipper"; 244,219 square feet are so devoted to yarding livestock for the traders or dealers and bring to respondent no revenue from yardage charges; 255,436 square feet are so devoted to holding for delivery to the packers the livestock purchased by them in the stockyard and such direct shipments of livestock as they may receive; 10,050 square feet are so devoted to holding for delivery to order buyers livestock purchased by them on the stockyard and yield to respondent no revenue from yardage charges; and the remaining 1,659,013 square feet and the structures thereon (except approximately 203,834 square feet of vacant land scattered in small plots among the pens and other structures) are used in connection with one or more of the above described warehousing services or with some other function of respondent. In saying that a certain

portion of the area is used directly and exclusively for a particular warehousing service it is meant that customarily it is so used. It should not be understood that that portion of the property is never used for any other purpose, for nothing in the stockyard is as static as that. The primary object is to take care of all the livestock which comes to the stockyard and in case of an extraordinary large volume of livestock being received, or other emergency, the usual customs and routines give way to the accomplishment of the primary purpose.

30. The portion of the 1,659,013 square feet of land, with structures thereon, which is devoted generally to the warehousing function is used jointly and interchangeably to such an extent with relation to warehousing for the "original shippers," the purchasers, the traders, and the order buyers, respectively, that it has not been allocated to the respective warehousing services rendered these respective classes of patrons. However, it seems fair to say that the relative proportions shown by directly used property are maintained with respect to the indirectly used property. Consequently, it appears that the "original shippers" use only approximately 60 per cent of that part of respondent's property which is used in the performance of respondent's warehousing function; the packers use approximately 20 per cent; the traders use approximately 19 per cent, and the order buyers approximately 1 per cent. Neither the traders nor the order buyers pay any warehousing or yardage charge for the use of the 19% and 1% respectively, the yardage paid by the traders being for use of the property in the "commission division."

31. Incidental to its functions of providing a livestock depot and a livestock warehouse, respondent provides feed and bedding for, and feeds and supplies it to the livestock in its custody, whenever such feed or bedding is ordered by the owner of the livestock or his agent. The feeds fed are principally (1) hay, both prairie and alfalfa; (2) corn; and (3) oats. The bedding is straw. Feed and bedding are suppplied to livestock both in the pens of the stockyard and in railroad cars. When supplied to pens, the charges are:

Hay, prairie	$1.25 per cwt.
" alfalfa	1.90 " "
Corn	1.60 per bushel measure
Oats	.90 " " "
Bedding (straw or hay)	.75 " bale

When feed and water are supplied to livestock in cars a charge of $1.00 per deck is made in addition to the above stated feed charges. In some instances hay is purchased in ton lots, delivered to the pens by respondent but fed by the purchaser. In such cases the charge per ton is $2.00 less than the above stated prices would indicate.

32. The difference between (1) the market price of the feed or bedding delivered at the stockyard and (2) the price paid for it by the owner of the livestock is spoken of as the "spread." For the year 1928 the average "spreads" on feeds and bedding sold for consumption in the stockyard (expressed in percentages of such market prices) were:

Hay, prairie	157 per cent
" alfalfa	88 " "
Corn	75 " "
Oats	55 " "
Bedding	181 " "

33. These "spreads" represent gross and not net profits, for handling costs, overheads, and other indirect costs have not been included. However, if such costs were deducted there would remain net profits in excess of what might properly be called the merchandising profits. There is no feeding done in the stockyards without charge, therefore the effect of these "spreads," in addition to providing a merchandising profit, is (1) to mitigate in part such inequality as may result from the failure to apply yardage charges to all persons who receive warehousing services, and (2) to some extent to give effect in charges to the element of time in the stay of the animal in the stockyard. Under the system of yardage charges now in vogue, there is paid on a consignment of livestock which is sold and removed from the stockyard within a few hours after its arrival the same charges as on a consignment which is warehoused for several days. Obviously the cost of the latter service is greater than of the former but probably it would be impracticable to attempt to graduate the yardage charge according to the length of time the animal is warehoused. Until some simple plan, not yet suggested, is discovered, so to do would introduce an intricacy and confusion in collecting such graduated yardage charge which would be defeative of the object sought.

34. The extent to which the time element in the warehousing of livestock is reflected in the increased income from feed and bedding is illustrated by the following facts:

While in the year 1928 there were sold in the commission division 41,372 cars of livestock and the purchase by dealers amounted only to 127,721 head of cattle and calves, 87,547 head of hogs, and 3,020 head of sheep, which, being reduced to carloads on the basis of 27 cattle, 70 hogs, and 125 sheep to a single deck car, amount to 6,004 carloads of livestock; nevertheless out of gross sales of feed and bedding made by respondent in the same year and amounting to $448,487.35, the commission men purchased for the livestock handled by them $257,800.34 or 57% of the whole, whereas the dealers purchased $107,445.01 or 24% of the whole, the remaining $83,242 or 19% of the whole having been used by respondent for its own animals and sold to a manufacturer of serum whose plant is situate near the stockyard.

35. Stated somewhat differently, while the commission men handled 87% and the dealers 13% of the market animals which consumed feed and bedding in the stockyard, the commission men purchased for such livestock only 70% and the dealers purchased 30% of all feed and bedding sold by respondent for consumption by market animals in the stockyard. This indicates that on an average each head of livestock was warehoused by respondent for the dealers for more than twice as long as each head was warehoused for the original shipper. It also indicates that any reduction in the "spreads" on feed or bedding will advantage that class of patrons whose livestock remains longest in the yard more than twice as much per head of livestock handled as it will those whose animals stay a shorter time.

36. By far the greater part of respondent's gross income results from yardage, feed, and bedding charges, the remainder coming from loading and unloading livestock, office rents in the Exchange Building, and certain incidental services and activities. In the year 1928 respondent's gross income for rate making purposes amounted to $809,108.59. Of this, $699,251.79, or 86.4% arose from yardage, feed, and bedding charges and was divided among those sources of income in the following proportions (the percentages being of the gross income for rate making purposes): Yardage $519,677.25, or 64.3%; "spread" or gross profit on feed sales $167,083.83, or 20.6%; and "spread" or gross profit on bedding sales, $12,490.71, or 1.5%. As a practical proposition under the law, respondent must be allowed rates which will produce sufficient gross income to result in a

fair return on the fair value of its used and useful property. The bulk of this income must be derived from yardage charges and the "spreads" or gross profits on the sales of feed and bedding. Therefore, as above stated, if the total stockyard charges be reduced and such reduction be applied to the "spreads" on feed and bedding, it will result that the cut will have been made at the point where the least benefit will result to the patron whose livestock occupies the stockyard the shorter time.

37. Respondent does not list in its schedule of rates and charges filed pursuant to the requirements of the Packers and Stockyards Act, 1921, the charges it makes for the services which next to yardage and the gross profits on feed and bedding, yield its greatest revenues; namely, (1) loading and unloading and (2) rents of space in the Exchange Building and in certain garages and rent of the Transit House Hotel. Of respondent's total income for rate purposes amounting to $809,108.59, loading and unloading yielded $52,011 or 6.4%, and rents brought in $46,108.33, or 5.7%. Of the rents $41,741.36, or 5.2% resulted from offices in the Exchange Building and .5% from garage space and the Transit House Hotel. The probable reason why these charges are not listed in its schedule is that respondent does not regard them as being for stockyard services, as defined in Sec. 301 (b) of the Packers and Stockyards Act, 1921.

38. The remaining $11,737.47, or 1½% of the gross income for rate making purposes, arose from certain incidental services rendered and activities engaged in. Of that amount $4,708.31 was derived from incidental services, the charges for which are listed in respondent's schedule as follows:

Service	Scheduled Rate	Income
Use of facilities for vaccinating hogs	10c per head	$ 4,238.40
Cleaning and disinfecting	See below	298.20
Dipping and spraying	" "	171.71
		$ 4,708.31

The cleaning and disinfecting charges apply "whenever it is necessary to clean and disinfect any portion of (Respondent's) pens by reason of the movement in or through the yard of livestock infected with contagious diseases."

In such case, the owner of such infected livestock must pay for disinfecting as follows:

Single pens	$2.50
Double pens	4.00
Chutes	2.50
Alleys (same ratio as pens)	.37 per 100 sq. ft.
Wagons and small trucks	.75 each
Trucks of 2 tons capacity and over	1.00 each

The income derived from cleaning trucks of manure and debris is separate from this. Respondent recites in its schedule of rates and charges that the dipping and spraying is done under supervision of the United States Department of Agriculture or the Missouri State Board of Agriculture and disclaims any responsibility for loss or damage occasioned thereby. Respondent furnishes the facilities, the dip, and the labor and charges therefor as follows:

Cattle	35c per head,	minimum	$35.00
Calves	15c " "	"	35.00
Hogs	5c " "	"	
Sheep	5c " "	"	8.00
Goats	5c " "	"	8.00

Under certain circumstances enumerated in the schedule, the minima per owner may be less than above indicated.

39. The remainder of the $11,737.47 mentioned in the preceding paragraph, namely, $7,029.16, was derived from a number of miscellaneous activities which either do not involve "rates or charges" or for which no rates or charges are listed in respondent's schedule.

40. Having analyzed the services rendered by respondent and the respective charges made therefor and having shown the income derived by respondent therefrom and the proportion of such income, where any, accruing from each service, it becomes pertinent to ascertain the reasonable costs of rendering those services. Necessarily preliminary to such ascertainment is consideration of the:

Used and Useful Character of Respondent's Property.

Land.

41. Respondent's land consists of 372,414 acres situate partly within and partly without that part of the city of St. Joseph, Missouri, which is known as South St. Joseph. For purposes of convenience in appraising and discussing this land, respondent has divided it into 17 "zones," 14 of which lie in Buchanan County, Missouri, without but adjacent to the corporate limits of St. Joseph, and are desig-

nated by the letters A to N, both inclusive, and three of which are situate within and adjacent to the corporate limits of St. Joseph and are designated by the numerals 1, 2 and 3, respectively.

42. Respondent concedes that its Zones F-1, G, H, I, J, K, L, M, 3, and all of its Zone N, except .84 acre or 36,000 square feet, which zones contain in the aggregate 184.05 acres, are neither used nor useful for the rate making purposes involved in this proceeding. It contends, however, that the lands embraced within its Zones A, B, C, D, E, F, and 1 and 2, together with the structures thereon, are both used and useful for the aforesaid purposes. Accordingly, each of the zones last above named is herein discussed separately with respect to its used and useful character.

Zone A.

43. Respondent's Zone A contains 74.72 acres or 3,254,803 square feet. It is on this zone that respondent performs the three functions heretofore described of providing a market place, a livestock depot, and a warehouse for livestock. On it are located the entire cattle, hog, and sheep divisions, the Exchange Building and its annex, runways and viaducts for livestock barns, and elevators for feed, the loading and unloading facilities, and the various other properties usually employed in the operation of a stockyards. Of this zone 2,858,889 square feet are found to be used and useful in the rendition of those stockyard services the reasonableness of the rates for which is being determined. This area includes 203,834 square feet or approximately 4.68 acres of vacant land which at the time of the hearing was not being used for any purpose. This vacant land consists of small parcels interspersed among the pens, alleys, runways, buildings, etc. For the reasons hereinafter discussed, the inclusion of these vacant parcels in the used and useful property is not, as land for expansion but because of the impracticability of excluding small parcels interspersed in the used and useful property. It is to be observed, however, that if and when respondent extends its facilities over 4.68 acres of land more than it occupied at the time of the hearing it still will be using an area no greater than that for which allowance is herein being made in the rate base. The remaining 395,914 square feet of this zone are devoted to the following uses and purposes:

44. At the time of the hearing 367,000 square feet were leased to Rountree, Dutton, McKee, Nichols, and Davis, respectively, and used by the lessees as private feed lots. That is to say, these lessees purchase mostly, if not entirely, in the stockyard, livestock consisting principally of sheep but partly of cattle and remove it to their respective feed lots to be fed and finished, after which they return it to the sheep or cattle division of the stockyard where it is sold, mostly to the packers. While the livestock is in these feed lots, it is not in custody of the respondent nor is it fed or watered by respondent nor is the feed purchased from respondent. When it is returned to the stockyard for sale the owners of it, being the lessees of the feed lots, pay the same yardage charges imposed upon anyone who drives into the stockyard livestock of the same species. Respondent contends that the land involved in these feed lots is used and useful, primarily because it constitutes land for expansion and secondarily because of being devoted to these livestock feeding purposes.

Land for Expansion:

45. The claim for the inclusion of this land in the used and useful property as land for expansion is based on the reasoning that it would be bad management for respondent to dispose of all of its land except that now in actual stockyard use and if and when it needed to expand its facilities be confronted with the necessity of purchasing from an adjoining proprietor who may have placed extensive improvements upon the property and who, in any event, would be in a position to compel respondent to pay an unreasonably high price. The soundness of this reasoning from the standpoint of management of the business is not disputed. However, it is not the duty of the Secretary of Agriculture to manage respondent's business, but rather to ascertain the property and values which are to be included in the rate base as one of the elements in the determination of reasonable rates. It may be the best of management to hold this property in reserve for the time, if it ever comes, when it will be needed for the expansion of facilities, but there are three outstanding reasons why its value should not be included in the rate base. (1) Under the law of the land there is to be included property used and useful in the rendition of the service or services for which the regulated rates are being charged. This does not mean used or useful. The primary fact to be ascertained in this connec-

tion is whether the property is being used. If it is not being used, it is needless to inquire into whether it might, under some circumstances which may arise in the future, prove to be useful. This land is not now being used for any purpose other than the feeding of livestock, which use is hereinafter discussed. (2) The primary reason, from the standpoint of management, for holding this land is that its enhancement in value would probably exceed the aggregate of the necessary carrying charges on it, wherefore it is good business for respondent to retain it, paying those charges. If the value of this land be included in the rate base, it means that respondent's patrons, rather than respondent, must pay the carrying charges, except in so far as they may be borne by the contributions made by those who feed livestock upon it. If and when the land is brought into use and included in the base for the determination of rates it would be included at present-day values, it might be equitable for the respondent's present-day patrons to pay the carrying charges were it not for the probability that a number, at least, of those patrons will have ceased to patronize the stockyard before this land is brought into use and, therefore, would never receive any benefit from their contributions to the carrying charges on it. However, to include this land in the rate base now and, as no doubt would be done, to value it when brought into use at the value then obtaining would mean that respondent's patrons must pay the carrying charges over the period of inactivity and yet all benefit from so doing would result to respondent and none to its patrons. (3) The evidence in this proceeding shows clearly that over the period of the past 13 years respondent has made a net expansion of its facilities amounting to less than 3 acres. At this rate at least 17 years will have expired before respondent will have expanded over more than four additional acres and the value of more than that number of acres in excess of the present requirements of respondent is being included in the rate base.

46. By net expansion of less than 3 acres during the past 13 years it is meant that, by reason principally of changes in the manner of the coming of the livestock to market and the method of handling it in the stockyard, there have been brought into use during that period 12.22 acres of land which theretofore had not been devoted to any stockyard use and during the same period and for the same reason there had been retired from use 9.25 acres of land thereto-

fore devoted to stockyard uses, leaving a net increase of 2.97 acres. Except for the usual fluctuations from year to year due to livestock production cycles and similar causes, the receipts of livestock at respondent's stockyard over the period of 25 years to and including the year 1928 have remained practically stationary, and the indications are that that condition will continue over the immediate future. Therefore, even if it were correct in principle to include in the rate base the value of land held for expansion, the facts in this proceeding indicate no immediate need for such land.

Livestock Feeding Lots:

47. Respondent's claim that the value of this 367,000 square feet of land in its Zone A should be included in the rate base because it is used for the feeding of livestock, even though the Secretary of Agriculture should find that its possible use for expansion purposes does not warrant such inclusion, is based upon the following contentions: (1) That furnishing these feed lots is a stockyard service within the Packers and Stockyards Act; (2) That the feed lots are essential to shippers of livestock, it being argued that the custom of shippers of sheep from the range country to market their entire crop of lambs, only a part of which are ready for slaughter or suitable for shipment to the country to be finished, while the remainder consist of "heavy feeders" which must be finished at near-by feed lots, renders it essential to the shipper that respondent provide such feed lots; (3) That feed lots have increased the receipts at the market, the argument being that the improvement of the market for the "heavy feeders," as above mentioned, has caused more producers of lambs to patronize respondent's stockyard and thereby to increase the receipts of sheep at that yard; (4) That the feed lots have increased respondent's income, this being a natural corollary of the last mentioned argument and it being said in addition that the yardage charges paid on these lambs, when they have been finished and are taken into the stockyards to be sold, further increases respondent's income; and (5) that the feed lots bear their fair proportion of market charges, it being said that the total value of the property included in the sheep feed lots is $227,643, while the total rental is $7,020, and that if there be added the approximately $16,000 received from yardage when these lambs are driven back into the stockyards to be sold, the total revenue is $23,020 or a re-

turn of more than 10% per annum on the property used for this purpose.

48. It is not found necessary herein to determine the legal question as to whether the supplying by respondent of these feed lots is a stockyard service. Even if it be such, the value of the property involved would not necessarily become part of the rate base, because it would not necessarily be used or even useful in the rendition of those services the reasonableness of the rates for which is being determined.

49. The fact that the existence of these feeding activities near the stockyard tends to improve the market for lambs from the range country does not cause the value of the land involved to become a part of the rate base. The livestock market existing at St. Joseph involves an interdependent relationship between those who sell and those who buy. The theory that the purchaser of livestock should be given services at less than the cost of rendition and that the remainder of such cost should be included in the charges made to the sellers of livestock because the existence of the purchasers on the market is advantageous to the sellers, is just as fallacious as the proposition that the seller should receive services at less than reasonable cost and the remainder be paid by the purchaser because existence of the seller is essential to the business of the purchaser. It is evident that neither could exist without the other and that neither has a right to any degree of free service at the expense of the other on the theory that his presence is essential to the other's welfare.

50. There is no proven causal relationship between the establishment of these feed lots and the increase of receipts of sheep at the St. Joseph Stockyard since their establishment. The two may be merely coincidental or the result may have flowed from causes of which the feed lot operations are only one or even a minor one. If the value of these feed lots be included in the rate base on the theory that the advantage to the stockyard patron through the decrease of yardage charges brought about by increase of receipts offsets or exceeds the burden upon such patrons of paying as a part of the rates the difference between the income from the rental of these feed lots and the cost of rendering that service, it would be necessary to enter upon a much nicer comparison of benefits and burdens than the record in this proceeding permits. Also fluctuations from time to time in

the relativity of the benefits to the burdens logically would have the effect of periodically including the feed lots in and withdrawing them from the used and useful property. The determination of their character should not be founded upon such a speculative and unstable basis.

51. While the feed lot sheep which are returned to the stockyard for the purpose of being sold pay the regular yardage charges, it is not shown that they receive less than the regular yardage services. No reason is apparent why less charges should be imposed than upon sheep shipped to the stockyard from the feed lots of farmers in the country, many of which may originally have been purchased in the stockyard in the same manner as are the feed lot sheep. No distinction in principle is observed between the circumstances surrounding these feed lots and a situation in which respondent, owning a farm ten miles out in the country, leased it on condition that the lessee should use it for the purpose of feeding sheep purchased in the stockyard and should return all such sheep to the stockyard for resale. Yet respondent's manager gave it as his opinion that such circumstances would not cause the farm to become used and useful property for the purpose of inclusion in the stockyard rate base. Therefore, it is found that the above described area of 367,000 square feet within respondent's Zone A, together with the structures therein and thereon, is not used and useful in the rendition of the services for which are charged the rates, the reasonableness of which is herein determined.

52. In addition to the above described feed-lot area of 367,000 square feet, there are within respondent's Zone A (1) an alley between the Nichols and Davis feed lots having an area of 3,840 square feet; (2) three-fourths of the old southern cattle dock with an area of 21,300 square feet; and (3) that portion of the old southern cattle dead line which lies north and west of the Rountree feed lot and covers an area of 3,550 square feet.

53. The reasons given above for the exclusion from the rate base of the value of the feed lot lands and structures apply with equal force to the alley between the Nichols and Davis feed lots, which is used for the same purposes as the lots.

54. Formerly tick infested cattle from the South were permitted to be shipped in interstate commeree to the stock-

yard for immediate slaughter, but it was required by law that they be handled in facilities entirely separate from those used in the handling of so-called native cattle and it also was required that these special facilities be separated from the remainder of the stockyard by a strip of vacant and unusable ground known as the deadline. A few years ago it became unlawful to ship tick-infested cattle in interstate commerce for any purpose. Accordingly, this use of the special facilities was abandoned by respondent and to some extent other uses were found for them. The old southern cattle loading and unloading dock contains a total of 28,400 square feet. It is not now used for any purpose. One-fourth is interspersed with the used and useful land and has, therefore, been included with it. Three-fourths of it, containing 21,300 square feet, may in the same sense be said to be interspersed with the feed lot area. Likewise, the old southern cattle deadline is not now used for any purpose. That portion of it which is interspersed with the used and useful property is found to partake of the nature of that area. For the reasons above stated the aforesaid alley, three-fourths of the southern cattle dock, and that portion of the dead-line north and west of the Rountree feed lot, containing in the aggregate 28,690 square feet, are found to be neither used nor useful in the rendition of the services for which are charged the rates the reasonableness of which is herein determined.

Meter House:

55. Two-hundred and twenty-four square feet are covered by the meter house, which is leased to the corporation which supplies water to respondent. The use made of it is by that company rather than respondent. It is not used and useful for the rate making purpose involved in this proceeding.

Zone B.

56. Respondent's Zone B contains 17.09 acres or 744,440 square feet. Of this area 531,487 square feet are leased to the Anchor Serum Company and used by it in the manufacture of livestock serum, the remaining 212,953 square feet being included in what is known as the O'Connell Feed Lot where cattle are fed by a private lessee under much the same conditions as have been described with relation to the feed lots located on respondent's Zone A. Respond-

ent claims this land as used and useful for rate making purposes, primarily as land for expansion and secondarily because upon part of it is located a business manufacturing a product used by some of respondent's patrons and upon the remainder of it is a feed lot. The reasons heretofore given for not including in the rate base the value of lands held for expansion apply with even greater force to the cattle feeding lot within this zone. No reason whatever is apparent why the leasing of a tract of land to a lessee who produces an article used by respondent's patrons should cause the value of that land to be included in the rate base.. Therefore, all of respondent's Zone B, together with all structures therein and thereon, are found to be neither used nor useful in the rendition of the services for which are charged the rates the reasonableness of which is determined by this order.

Zone C.

57. Respondent's Zone C contains 22.91 acres or 997,960 square feet. Of that area 543,797 square feet are leased to two lessees who operate upon it cattle feeding lots substantially similar to the O'Connell Feed Lot above mentioned, 335,412 square feet are leased to one Akers and used for farm purposes, 21,600 square feet are covered by a lane lying between the feed lots and the farm land, 37,500 square feet lying between the southerly line of the leased area and the tracks of the St. Joseph Belt Railway are used as a roadway, 15,600 square feet are covered by the extension of Packers Avenue from Zone A across Zone C to the manure dump on Zone Red-N and the remainder is vacant land. Respondent claims that all of Zone C is used and useful as land for expansion and, as to a portion of it, because used for livestock feeding. These contentions have been disposed of in connection with Zone A. There appear no reasons for finding any of this zone used and useful except 15,600 square feet covered by the extension of Packers Avenue. Therefore, the aforesaid 15,600 square feet are found to be used and useful and all of the remainder of Zone C is found to be neither used nor useful in the rendition of the services for which are charged the rates the reasonableness of which is determined by this order.

Zone D.

58. Respondent's Zone D contains 11.60 acres or 505,296 square feet. It is entirely vacant and unused for any purposes except that Swift and Company, a packer, maintains across it a steam pipe line between two parts of its packing plant. Being unused, it cannot be found to be used. Nevertheless, respondent contends that it is useful as a site for the location of a possible additional packing plant. There is no evidence of any such probable use of this land in the immediate future except that a small plant located in St. Joseph, Missouri, and already purchasing all its livestock in the stockyard has been contemplating locating nearer to the yard. Even though there were in immediate contemplation the location on this zone of a packing plant bringing a new buying demand to the market, there appears no reason why the patrons of the stockyard should be required to pay in rates the carrying charges on this land to the end that the stockyard or the incoming packer might profit by enhanced values obtained at the expense of the stockyard patron. Therefore, it is found that Zone D is neither used nor useful in the rendition of the services for which are charged the rates the reasonableness of which is determined by this order.

Zone E.

59. Respondent's Zone E contains 10 acres or 435,600 square feet. This entire zone lies within the O'Connell Feed Lot above mentioned. It is claimed by respondent to be used and useful as a site for the location of a possible new packing plant and also because a livestock feeding operation is being carried on upon it. Both of these contentions have been disposed of in connection with the zones hereinbefore discussed. Therefore, Zone E is found to be neither used nor useful in the rendition of the services for which are charged the rates the reasonableness of which is determined by this order.

Zone F.

60. Respondent's Zone F contains 47.47 acres or 2,067,793 square feet. Presently it is used for farming. Respondent claims that it is used and useful as a site for a possible large packing plant. What has heretofore been said with respect to Zone D applies with equal force to this

zone. Therefore, Zone F is found to be neither used nor useful in the rendition of the services for which are charged the rates the reasonableness of which is determined by this order.

Zone Red-N.

61. Respondent's Zone Red-N contains .84 acre or 36,590 square feet. It is used for the purpose of dumping in a large city sewer manure from the stockyard and, therefore, is found to be used and useful in the rendition of the services for which are charged the rates the reasonableness of which is determined by this order.

Zone 1.

62. This zone containing .544 acre or 23,697 square feet lies within the business district of the city of St. Joseph which is known as South St. Joseph and is separated by rather extensive railroad tracks and yards from the stockyard area. Of this zone 15,805 square feet are occupied by a brick hotel building known as the Transit House, the remaining areas being devoted to a building a part of which is leased to an operator of a livestock market newspaper known as the Stockyards Journal and the remainder of which is leased to the operator of a harness shop. All of this zone together with the structures thereon is claimed by the respondent to be used and useful for rate making purposes.

Harness Shop and Stockyard Journal:

63. The contention with respect to the harness shop is that for those producers of livestock who bring it to market by truck it is convenient to have a store where they can purchase some of the supplies used on their farms. This contention would apply with equal force to any land in the vicinity of the stockyard owned by respondent and leased to the operator of a store selling any kind of article used by farmers. As to the portion of the building rented to the Stockyard Journal, the claim is that that livestock market paper is useful and advantageous to those who ship livestock to the stockyard and pay the yardage charges. If this be true, no reason is perceived why such users of this paper should not pay subscription rates adequate to enable the publisher to pay a rent equal to a fair return upon the fair value of the property he leases. Certainly any de-

ficiency should not be recouped by imposing it in the form of stockyard rates and charges upon patrons regardless of whether or not they find this paper useful to them. Therefore, this part of Zone 1 is found to be neither used nor useful in the rendition of the services for which are charged the rates the reasonableness of which is determined by this order.

Transit House Hotel:

64. The building known as the Transit House was erected some years ago and at a time when passenger transportation facilities between South St. Joseph and the hotel area of St. Joseph were not so good as they now are. It appears to have been suited to the then conditions. Since that time patronage has declined and now it is leased to an operator for $100 per month under a contract whereby the operator's books are open to respondent's inspection and, if the revenues of the hotel business warrant, respondent may increase the rental. The rental so paid falls far short of yielding a fair return upon the fair value of this property, if its fair value be taken to be the cost of reproduction new less depreciation, to say nothing of its proportion of general overheads. Its chief present patronage is by those who drive trucks in which livestock is brought to the stockyards. These are not usually the owners of the livestock but persons engaged in the conduct of public trucking businesses. They come to the stockyard mostly late at night and it is necessary for them to find a place to sleep. They are prohibited by law from parking their trucks in the streets of St. Joseph. Apparently they are unable to or will not pay for the accommodation they receive rates adequate to yield a fair return upon the fair value of the property. They would be satisfied with less costly accommodations were such available. Respondent contends that having this accommodation for the truck drivers tends to induce them to come to its stockyard rather than some other; that the maintenance of this facility is advantageous to the shipper of the livestock, and therefore, that it should be included among the used and useful property. The hotel, including the 15,805 square feet of land which it occupies, is found to be used and useful in the rendition of the services for which are charged the rates the reasonableness of which is determined by this order.

Zone 2.

65. Respondent's Zone 2 consists of 3.19 acres or 138,956 square feet. It adjoins respondent's Zone 1 and is covered by a brick barn formerly used for the warehousing of horses and mules sent to the stockyard to be sold. Since the cessation of that business, it has been leased to a private operator who uses it for sheep feeding purposes. For a few days each year the lessee surrenders to respondent possession of this property and respondent conducts in it without charge a livestock show, whereat boys and girls who are members of the 4-H clubs conducted under the Extension Service of the United States Department of Agriculture exhibit their livestock. Respondent contends that either or both of these uses render the property used and useful for rate making purposes. The contention with respect to sheep feeding is disposed of by what has been said in connection with the use of other zones for the same purpose. The conduct of this livestock show is of undoubted advantage to some, at least of the producers of livestock who patronize respondent's stockyard. Nevertheless, such benefits should be recognized by voluntary rather than imposed contributions. In other words, respondent should not be permitted to use its rate assessing power to impose upon its patrons charges which the patrons may or may not deem to be for his benefit but should leave the patrons' contributions to such worthy causes to the voluntary judgment and discretion of the patron. Therefore, respondent's Zone 2 is found to be neither used nor useful in the rendition of the services for which are charged the rates the reasonableness of which is determined by this order.

Summary of Used and Useful Land.

66. A summary of the land owned by the respondent which heretofore has been classified as used and useful is as follows:

Respondent's Zone A—74.72 acres		3,254,803 sq. ft.
Not used and useful in Zone A:		
Meter House	224 sq. ft.	
Alley between Nichols & Davis Feed Lots	3,840 " "	
Three-fourths of Southern cattle dock	21,300 " "	
Dead line north and west of Rountree feed lot	3,550 " "	
Private feed lots	367,000 " "	395,914 " "
Used and useful land in Respondent's Zone A		2,858,889 sq. ft.
Packers Ave. across Respondent's Zone C		15,600 " "
Manure Dump in Zone N (.84 acre, Red-N)		36,590 " "
Transit House site in Respondent's Zone 1		15,805 " "
Total land found to be used and useful in the rendition of the services for which are charged the rates the reasonableness of which is determined by this order		2,926,884 sq. ft.

STRUCTURES.

67. The structures located in or upon lands hereinbefore found to be used and useful are also found to be used and useful in the rendition of the services for which are charged the rates the reasonableness of which is determined by this order. All structures located upon lands hereinbefore found not to be used and useful in the rendition of the services for which are charged the rates the reasonableness of which is determined by this order are also found not so to be used and useful.

Foot Subway.

68. Illinois Avenue is the only practicable avenue of approach to respondent's stockyard by pedestrians from the business section of South St. Joseph or who are travelling from other parts of the city of St. Joseph to the stockyards by trolley car. Those cars stop in South St. Joseph. Between that point and the stockyard rather extensive tracks of the Chicago, Rock Island and Pacific Railway Co., The Atchison, Topeka and Santa Fe Railway Co., the Chicago, Burlington and Quincy Railroad Co., and the St. Joseph Belt Railway Company cross Illinois Avenue. Frequently the crossing is blocked by temporarily standing or crossing freight trains. At such times the ingress and egress of pedestrians to and from the stockyard was prevented, except at the hazard of passing between the freight cars. Accordingly, there was constructed under an agreement between respondent and the railroads above named, except the St. Joseph Belt Railway Company, a concrete under-

pass, eight feet wide and eight feet high, in the clear, and extending parallel with Illinois avenue from a point in respondent's Zone A near the Exchange Building eastwardly to a point on the east side of the most easterly of the railroad tracks, a total length of 412 feet. The west entrance to this subway is located on respondent's Zone A, occupying 1,925 square feet. It, together with the land it covers, already has been included among respondent's used and useful land and structures in connection with Zone A. No other of respondent's land is covered by this subway. By the agreement under which it was built the costs of construction and maintenance were borne by respondent and the respective signatory railroads in the proportion of the lineal footage of the subway occupying their respective lands, including apparently with respondent's land that of it which is leased to the St. Joseph Belt Railway Company. On this basis the percentages of cost and maintenance agreed to be borne by each party are as follows:

The Rock Island Company	7.8883%
The Santa Fe Company	10.3156%
The Burlington Company	40.2912%
The Stockyards Company	41.5049%

69. Respondent claims that this subway is used and useful as a necessary means of ingress and egress to and from its stockyard by its employees and others having business with it, especially at certain hours of the day when a number of freight trains are operating upon the railroad tracks under which it passes. Undoubtedly this subway offers a safe means of passage under railroad crossings which are exceedingly hazardous at grade. While respondent probably would not be legally liable for accidents occurring upon the tracks of any of the railroads mentioned and it would seem that that portion under the tracks of the Belt Railway belongs more properly in that company's valuation than in respondent's, nevertheless it was neither claimed by nor allowed to the Belt Railway in its valuation and the usefulness of this underpass in safeguarding human life and facilitating ingress and egress to and from respondent's stockyard is apparent. No reason is perceived why the value of that part of it which was built by respondent should not be included in the rate base.

70. Therefore, such portion of this subway, namely 41.5049%, is found to be used and useful in the rendition

of the services for which are charged the rates the reasonableness of which is determined by this order.

VALUATION.

71. The following discussion will consider first the values of the used and useful lands and second the value of the used and useful structures.

Used and Useful Land.

72. Respondent's land was valued by three competent and well qualified appraisers engaged in the real estate business in St. Joseph, Missouri; one was employed by the Government for this purpose and the other two by respondent.

Zone A.

73. The Government's appraiser placed upon the land in this zone a valuation of 35¢ per square foot and respondent's appraisers put such valuation at 30¢. It is very clear from the record that all of these appraisers included in their valuation the going concern element inhering in the land because of its integration in, and use as a part of a going operating concern, namely, the stockyard. It is equally clear that in the mind of each of the appraisers this going concern element was valued at 15¢ per square foot. Hereinafter a separate allowance is made for going concern value, therefore, the value of the used and useful land in respondent's Zone A is found to be 25¢ per square foot, or a total of $714,722.25.

Zone C.

74. Each of the appraisers placed upon Zone C the value of 15¢ per square foot. Accordingly, that is found to be its value. Therefore, the used and useful land in Zone C has a total value of $2,340.

Zone Red-N.

75. On the map used by respondent's land appraisers a large tract was designated as Zone N. Thereafter respondent outlined this zone with yellow, indicating that it was not claimed as used and useful. However, there had been sold out of the southwest corner of Zone N a small tract, from which had been excepted the .84 acres used for

dumping manure. At the time of making the map this was overlooked. Subsequently it was outlined in red as indicating that respondent claimed it to be used and useful. The value claimed for it is the same as the remainder of Zone N. The Government appraiser found its value to be 10¢ per foot. Respondent's appraisers placed upon it a valuation of $3500 per acre, which is approximately 8¢ per square foot. Its value is found to be 10¢ per square foot or a total of $3,659.

ZONE 1.

76. This zone contains 23,697 square feet, only 15,805 of which are occupied by the Transit House Hotel. Respondent's land appraisers placed upon the entire zone an average value of 40 cents per square foot. The land appraiser employed by the Government was of the opinion that that part of it fronting on Illinois Avenue and occupied by the Transit House was worth 95 cents per square foot. Accordingly, the 15,805 square feet so occupied are found to have a value of 95 cents per square foot, or a total value of $15,014.75.

77. The total value of all of respondent's land heretofore found to be used and useful is $735,736.

Used and Useful Structures.

Cost of Reproduction New.

78. Respondent's used and useful structures were inventoried and appraised by engineers employed by the Government and by respondent, respectively. After a detailed comparison of their respective appraisals there was found no greater variation in estimated cost of reproduction new than one engineer would expect to find in two independent estimates of the same property, even though both had been made at the request of the same person. Accordingly, the engineers entered into a stipulation by which they recommended a finding of the cost of reproduction new of respondent's structures in an amount which would represent a mean between the amounts found by their respective appraisals. Accepting this recommendation of the engineers, the costs of reproduction new of the various items of used and useful structures is found to be $2,850,735. This total is composed of (1) cost of material and labor, $2,351,570, which includes what are commonly called construction over-

heads; (2) an allowance of 5% of the amount of materials and labor for omissions possibly unknowingly made in arriving at that item of cost and for contingencies which might to some extent increase that item, which allowance amounts to $117,579, making the total allowance on materials and labor $2,469,149; and (3) the following general overheads during construction:

Engineers, architects and supervision	5%	$ 123,457.00
Legal expense during construction....	1%	24,691.00
General office salary and expenses....	2%	49,383.00
Liability insurance 2% on labor of	$982,008	19,640.00
Taxes during construction, based on taxes actually paid by respondent for the year ending June 30, 1929		18,253.00
Interest at 7% for 6 months, being one-half of construction period		94,660.00
Interest on land during construction at 7% for one year ($735,736)		51,502.00
Making a total of		$ 381,586.00

79. The appraisers employed by the Government and respondent, respectively, were in agreement as to the propriety of including in the costs of reproduction new all of the above stated general overheads during construction, except that of interest on land during construction. Respondent's appraisers recommended its allowance, but the Government appraisers hold the contrary view. While it is true that interest on land during construction is not an element properly to be added to the present market value of such land, it is a necessary and inescapable cost of reproduction new of structures. Stockyard structures cannot be built and then moved to the land they are to occupy. The land must be in possession when the construction is started which means that money must have been invested in it or a liability for interest payments incurred. It would be exceedingly unwise to attempt to purchase the land in parcels as the construction progresses.

80. The appraisers employed by the Government and by the respondent were also in agreement as to the percentages on which the above stated general overheads during construction should be computed, except with respect to taxes during construction. This item is herein included in costs of reproduction new on the basis of the recommendation of the Government appraiser, which yields a higher figure than that of respondent's appraiser. The appraisers employed by the Government and by respondent, respectively, were in agreement that one year represented a reasonable period in which to accomplish the reproduction new of Respondent's structure.

Pre-Construction Overheads.

81. Respondent contends, however, that there should be included in the costs of reproduction new of its structures allowances of (1) $50,000 for what it terms "pre-organization expense," and which it says is necessary to be incurred prior to the beginning of the actual reconstruction of the structures; and (2) cost of financing. Respondent's contention as to the preorganization expense is based on the testimony of the witness, Burnell, who stated that it would include the investigation of the project, the estimates of the investment required to be made, the estimates of revenue to be derived from it, and the development of the information thus gathered into a completed unit of organization prepared to undertake actual construction; and that the cost of organizing the corporation would be only a comparatively small part of the amount estimated for this item, though it would be included. He stated that:

> "The chief element that would go to make up that expense would be the technical and administrative service in connection with the initial studies into the merit of the project. It is pretty much a matter of convincing yourself and preparing yourself to convince others that a stockyard was wanted."

The estimate of $50,000.00 was based on his judgment, said to have been obtained from experience. The appraiser for the Government was of opinion that the inclusion of this item in any amount in the capital values or the rate base would be improper. It is impossible to conceive of any legitimate way by which the actual cost of reproducing a structure would be increased by the difficulty which the reproducer encountered in persuading himself to enter upon the reproduction. To follow respondent's contention and the witness Burnell's theory to their logical result would lead to the conclusion that the patrons of a stockyard constructed by stubborn and cautious owners should pay higher rates than those of an actual similar stockyard built by men easy to convince. If the principle of fair return upon fair value is to continue as a guide to reasonable rates rather than become in effect destructive of rate regulation, some limit must be placed upon the inclusion in the rate base of values which represents little other than the flights of fancy of those seeking to obtain higher valuation. This so-called pre-organization expense is found to

be neither a cost of reproduction new nor an item proper to be allowed in the rate base.

82. Respondent's contention that there should be included in the cost of reproduction new of its property an item equal to 5% of the total value of its property, without including going value, is based upon the view that it would be proper for respondent to issue securities equivalent to such value and that it would cost approximately 5% to dispose of those securities. In other words, it is that respondent would raise sufficient money to buy its land and build its structures by selling securities at a selling cost of 5%. This contention also is based on the testimony of the witness, Burnell, who was of opinion that this item should be allowed regardless of whether those who construct the stockyard have the money or have to issue securities wherewith to obtain it, saying that,

> If the promoter has the necessary money he wouldn't have need to incur that expense, but he would be entitled to an allowance for it because that is what he would have to pay if he turned over that service to someone else.

83. This witness was also of opinion that this item should be included only once in the value notwithstanding the number of successive purchasers of the property and that each might have to incur the same expense for procuring the money wherewith to purchase it. It thus appears that, though, in the witness' opinion, this so-called cost enters into the value of the property, it is a value upon which the owner should not realize at time of sale. It also appears from the testimony of another witness called by respondent that when respondent's now outstanding bonds were sold only $940.00 was realized on each $1,000.00 bond. The Government appraiser, Henrici, was of opinion that it would not be proper to include this item in any amount in the rate base. Regardless of whether or not it should be included in the rate base, it certainly is true that the actual cost of reproduction of a property is in no wise changed by the amount of expense incurred in obtaining the money wherewith to pay for such reconstruction. It, therefore, should not be included as a reproduction cost. Neither should it be included in the rate base at all. The property used and useful in the rendition of the services for which the rates are charged is owned by those who purchased its securities, whether they were purchased at face

value or at a discount, and it is those people, rather than some mythical past promoter, to whom the law guarantees a fair return. The whole theory of fair return upon fair value as a basis for reasonable rates is that the worth of the outstanding securities should be equal to such fair value, whereby the holders of those securities would receive a fair return upon them. Herein there are being prescribed rates which will yield to the investor a fair return upon the fair base value of the securities rather than upon any discounted or market value at which he may have been able to purchase them. If, in addition to this, the amount of such discount be included in base values, it will result that respondent's patrons will be required to pay rates yielding more than the fair return hereinafter found. For these and other reasons which suggest themselves from the record in this proceeding, it is found that the so-called cost of financing does not enter into the cost of reproduction new and should not be included in the rate base.

Cost of Reproduction New, Less Depreciation.

84. Having determined the cost of reproduction new of the various units of the used and useful property, the most usual method of ascertaining the cost of reproduction new, less depreciation, is to find the per cent condition of each unit and multiply its cost of reproduction new by such percentage. There is, however, another method, in which cost of reproduction new, less depreciation, is procured by deducting from the cost of reproduction new of each unit a sum of money composed of (1) the estimated cost of replacing such parts of the unit as should be replaced, and (2) an estimate in money of the accrued depreciation in those parts of the structure which, though not sufficiently worn to warrant replacement, do show wear.

The two methods are not distinct, but each involves some elements, at least, of the other. They seem but slightly different methods of arriving at the same determination; namely, the proportion of the property which remains sound. The appraisal engineers for both the Government and the respondent used the first method described above. A consulting engineer called by respondent employed and recommended the second. On most of the used and useful structures the respective appraisal engineers found so little difference in their estimates of per cent condition that, by the stipulation mentioned above, they recommend the acceptance of the mean between their respective percentages.

85. The items of property as to which the engineers are closely in agreement as to the per cent condition relate largely to the pen areas now in active use. The record shows that as to this property both engineers pursue the same method, neither using the age and life method, which consists of ascertaining the age of a given structure and using that to discount a previously determined life expectancy for that class of structures. Both use the inspection method, which takes into account the age of the structure only as such age is indicated by present condition. And both depreciate each unit of property as a whole rather than by parts and then aggregating to find a composite for the structure. To illustrate: If the posts of a pen were found to be decayed but the boards sound, they did not find the condition per cent of the posts to be (say) 50 and that of the boards 100, but proceeded upon a basis that the condition of the posts also depreciated the value of the boards. These circumstances point to the fact that with respect to those units where the variations in estimating the condition per cent were so broad as to be desginated "irreconcilable" they arose from a difference in method rather than the personal element. Respondent engineer's action in respect to the pen areas was a concession to the views of the Government engineer in a spirit of harmony, rather than an expression of his own opinion. When he came to such important units as the Exchange Building, the foot subway, and so forth, he reverted to his own method, which was to estimate the condition per cent of the various parts of the buildings or structures and weight them into an average for the whole. To illustrate: He determined that the common brick work had suffered no depreciation. Therefore, he set it up as one hundred per cent. Similarly as to the floor joist. But if he found that the floor had suffered about one-fourth of all the wear it could stand, he set it up at 75 per cent. He did not consider inadequacy or obsolescence, because he was of opinion that neither could occur in the particular buildings or structures.

86. The Government engineer, on the other hand, considered that even the undeteriorated elements in a building, many of the parts of which had suffered from wear and tear, rust, rot, and decay, and against whose whole the inexorable factor of obsolescence, if not also inadequacy, was working suffered a depreciation in value.

87. When it was determined that there were certain items of property as to which the engineers could not agree upon the per cent condition, the Government engineer had two of his assistants make independent estimates. When these were returned they were compared with the original estimate and as to each item the highest figure was recommended by the Government engineers. As to those items of property on which the engineers are in agreement upon the condition per cent their recommendation is accepted. As to the items on which they are not in agreement the final figure recommended by the Government engineers is accepted. Accordingly, I find the per cent condition and the cost of reproduction new less depreciation of the used and useful property to be as follows:

	Average Per Cent Condition	Cost of Reproduction New Less Depreciation
Exchange Bldg. Area	74.776	$323,570
Cattle Division	81.564	613,019
Sheep Division	82.137	154,338
Hog Division	81.809	469,994
South of Hog Division	82.966	36,513
Company Stable	78.003	11,858
Transit House	73.000	117,877
General Items	83.049	49,258
Miscellaneous	71.984	23,808
Miscellaneous	84.564	77,575
Omissions and Contingencies 5%	79.854	93,891
Total	79.854	$1,971,701

Depreciation of General Overheads.

88. The appraiser employed by respondent was of opinion that the general overheads during construction depreciate. The consulting engineer, Burnell, called by respondent, and the Government appraiser, Henrici, were of opinion that such overheads do not depreciate. The opinion of each appraiser in this respect seems inconsistent with his method of ascertaining accrued depreciation and the resultant condition per cent of the property.

89. Undeniably, these overheads suffer no process of gradual wear and tear, rust, rot, and decay, but, like joist, which may go on unimpaired to the end of the life of the building, value goes out of these overheads when the structures come to the end of their usefulness. To the extent that the factors of depreciation have brought upon the structures a composite percentage of lessening in value,

these overheads have depreciated. It is true that when the structures have reached the end of their useful life there may remain a sort of "scrap value" in these overheads, in that possibly the architect's plans, or parts of them, could be used in the reconstruction, but the fact of the retention of such a value does not alter the conclusion that these overheads partake of the composite depreciation of the structures to which they relate. Therefore, it is found that the above enumerated overheads enter, in the following amounts, into and form a part of the cost of reproduction new, less depreciation, of respondent's structures which are used and useful in the rendition of the services for which are charged the rates the reasonableness of which is determined by this order, as follows:

	Average Per Cent Condition	Cost of Reproduction New Less Depreciation
Engineering, Architects Supervision—5%	79.854	$ 98,585
Legal Expense during construction—1%	79.854	19,717
General Office Salaries and expense—2%	79.854	39,434
Liability Insurance during construction (on labor only—$982,008)—2%	79.854	15,683
Taxes during construction	79.854	14,576
Interest 7% for 6 months (one-half of construction period)—3.5%	79.854	75,590
Interest on land during construction	79.854	41,126
Total		$304,711

90. It is found that (1) the cost of reproduction new of all the respondent's structures which are used and useful in the rendition of stockyards services is $2,850,735; and (2) the cost of reproduction new, less depreciation, of all of respondent's structures which are used and useful in the rendition of the services for which are charged the rates the reasonableness of which is determined by this order is $2,276,412.

Working Capital.

91. It was agreed at the hearing that $70,000 represented a fair amount for working capital. Accordingly it is so found.

Going Concern Value.

92. Respondent contends that in addition to any and all other values which may be included in the ascertainment of fair value, and the rate base, it is entitled to have al-

lowed and included an item of $667,000 as and for going concern value. Respondent's claim in this respect is based entirely upon the testimony of the witness Howson, an engineer who made an elaborate mathematical computation in an effort to show the amount or quantum of this so-called value; and upon the testimony of three of respondent's officers, who, together with four commission men doing business on the St. Joseph Stockyards, gave to Howson the speculations upon which he based his elaborate computation. The Government offered no evidence on this matter, except in rebuttal to show the feasibility of operating a stockyard during the period of construction and of caring for the business by temporary arrangements during such period.

93. The method recommended by the witness Howson, and which he called the Alvord, or comparative method, is an attempt to estimate the cost of reproducing the business which respondent now enjoys by assuming that some person or persons, desirous of operating a stockyard at St. Joseph, Missouri, found themselves in the peculiar position whereby they could purchase respondent's property and business as a going, operating concern or could construct exactly similar property and, if they decide upon the latter course, then respondent immediately would cease to operate its business. The witness adopts the one year construction period used by the valuation engineers as the basis for their calculation of certain overheads, such as interest during construction, and assumes that during that year all the business theretofore enjoyed by respondent would be dissipated. He then sets out to determine what it would cost the new concern to attach to its new stockyard the amount of business, and its resultant income, which respondent now enjoys. To do this, he seeks to ascertain the period of time which would elapse after the new yard began operations and before its receipts of livestock and resultant income would be equal to those now possessed by respondent. He also seeks to ascertain what percentage of respondent's present receipts of livestock would be recovered by the new yard during each year of the aforesaid period of recovery. He assumes that the expenses of the new company during each of those years would be the same as those of respondent during the test year in this proceeding, namely, 1928, and, deducting from such expenses the income expected to be derived from the

imagined receipts of livestock, ascertains the possible deficit during each of the recovery years. He aggregates the present worth of these supposed deficits into a total of approximately $667,000 and says that whether the new company built its own new yard at the cost of reproduction new shown in this record or purchased the existing yard with its attached business at the same cost of reproduction new plus $667,000 as going concern value, the ultimate cost to the new company would be exactly the same. Wherefore, he draws the conclusion that $667,000 is the fair value of the element of going concern in respondent's business.

94. In Valuation Docket 785, the St. Joseph Belt Railway, the Interstate Commerce Commission, addressing itself to this identical method testified to by the same witness, said:

> The analysis of the witness is so replete with assumptions and estimates as to render it worthless for all practical purposes. The whole method consists of a presentation in new form of an estimate of deficiency below a fair return which the carrier, if reproduced on valuation date, would suffer before it attained the status of a financially successful concern. The theory that the total amount by which the carrier's actual income during its early years fails to yield a fair return on the investment should be added as an element of value for rate making purposes was condemned by the Supreme Court in *Galveston Electric Company* v. *Galveston,* 258 U. S. 388. By the stronger reason, hypothetical deficiencies must also be rejected.

95. Respondent contends, however, that the witness Howson's method of estimating going concern value is no more speculative than that of the valuation engineers as to cost of reproduction new. Without analysis of the witness' elaborate procedure, this may appear to be true. But, the difference lies in this, that the quantities of material necessary to reproduce physical structures can be ascertained by the engineering processes of measurement and computation with reasonable mathematical certainty and almost wholly devoid of the element of guess and speculation. The present prices and costs of those materials delivered at the job can be found with approximately equal certainty; the present prices of union labor can be determined from lists maintained by the local unions; the amount of labor

probably to be required can be estimated from a wealth of experience of the particular valuation engineer and many others of his profession with respect to thousands of structures theretofore built, as can also the period of time required for the reconstruction and the amounts of the overheads which probably will be incurred. On the other hand, the witness Howson, while likening this estimate of the recovery of receipts to an engineer's estimate of the cost of constructing a physical property and saying that one is not more difficult or speculative than the other, admitted that in the case of estimates of reconstruction of physical property the engineer has the benefit of past experience whereas he had no such similar guiding star with respect to the recovery of stockyard receipts and had never gone through a stockyards business reconstruction, nor had any one else to his knowledge. Lacking this experience and its resultant knowledge, he sought from the three of respondent's officers and the four commission men above mentioned the required information as to the length of the recovery period and the rate of recovery of receipts of livestock during such period. Both he and they, in so far as they testified, admit that none of them has ever had any experience with recovery of the receipts and income of a stockyard or any other business. They suggested periods of recovery the average of which was approximately 8 years but he reduced it to 5 years and used that as his basic figure. They also suggested rates of recovery within the period which formed the basis of the rates used by him. Obviously this method is capable of expansion to produce any desired amount of going concern value by merely increasing the imagined period of recovery or slowing up the supposed rate of recovery. Inasmuch as no one has had any experience from which to form any judgment or estimate, no one could say that a period shorter than that estimated or a higher rate would be correct. For these and other reasons, the method suggested by the witness, Howson, for measuring going concern value is not adopted. His speculations and those of the other witnesses upon which he bases his computations are in no real sense evidence.

96. It is found that the going concern value of respondent's business and its property used and useful in the rendition of the services for which are charged rates, the

reasonableness of which is hereinafter determined, is $300,000.

Fair Value.

97. The fair value of respondent's property used and useful in the rendition of the services for which are charged the rates the reasonableness of which is determined by this order consists of the aggregate of the values heretofore found for the various classes of such property, namely, $3,382,148.

Fair Rate of Return.

98. Respondent contends that, in calculating the reasonableness of its rates, there should be employed a rate of return of at least 11%. This is based on the hypothesis of a capital structure of 1/5 bonds, bearing an interest rate of 6%, and 4/5 common stock, paying dividends at the rate of 6%, leaving 5% to be added to surplus, and is supported by the opinion of a local investment banker who calculated a return, or company earnings, of 7.10% on the 1/5 represented by bonds and of 11% on the 4/5 represented by the common stock, making a total of 10.22% on the entire capitalization, which he regarded as the minimum fair return.

99. An economist of wide experience, who had devoted much study to the question, was of opinion that a return, or company earnings, of 7½ to 8% would be sufficient to enable respondent's securities to occupy in the field of finance a position comparable to, that is, to be on a parity with the securities of other sound public utilities and industrial corporations, so that investors seeking to invest their funds would regard respondent's securities in as favorable a light as those of any other sound corporation that might be considered; that under all the circumstances, both financial and what he knew of the operation of respondent's stockyard, rates which at the time of the hearing brought in 7½%, and perhaps a little shade under that, would be as low as would maintain the securities equal to the value of the property on a parity with other securities, and if the rates produced as much as 8%, they would be getting to the point where they might be so high as to impose excessive charges upon respondent's patrons; that, if the value of the property be approximately equal to that of the outstanding securities, a rate of 7½% would be in-

dicated; and that this rate, varying possibly from slightly below 7½ to 8%, is not the return in the form of dividends which respondent would pay to its security holders but is the return which it would earn in order that they might continue to receive interest and dividends.

100. It is obvious that in the above stated 7½ to 8% there has been included an allowance for the payment of current interest and dividends and also a sufficient annual addition to surplus reasonably to insure the continuity of interest and dividends over future periods during which the stockyard net operating income may be insufficient to pay the fixed interest and the adequate dividends. In view of the fact that over the period of the past 25 years respondent's volume of business has remained practically stationary and it appears that, but for cyclical fluctuations, it will remain so in the immediate future; and that from 1916 to 1928, inclusive, respondent regularly paid annual dividends, and six special and two stock dividends; it does not appear necessary that as much as 5%, or even the amount which would result if the necessary dividends upon respondent's common stock be assumed to be 8% instead of 6% be carried annually to surplus. For these reasons, and others which suggest themselves from the record in this proceeding, it is found that 7½% constitutes and is a fair rate of return upon the fair value hereinbefore found for the used and useful property of respondent.

Income and Expenses.

Income.

101. Unless otherwise indicated, the word "income," when used in the discussion under this heading, denotes gross or total revenue from a particular activity or from respondent's activities as a whole.

102. Respondent's total income for the year 1928 as set up on its books was $862,507.44, of which $809,108.59 was derived from the activities engaged in in rendering the services for which are charged the rates the reasonableness of which is determined by this order and activities intermingled with them. The remaining $53,398.85 was derived from activities neither forming part of nor intermingled with the rendering of the services for which are charged the rates the reasonableness of which is determined by this order.

103. Illustrative of income from activities, the expense of which is intermingled with the expense of rendering the

services for which are charged the rates, the reasonableness of which is determined by this order, is that derived from loading and unloading livestock. No attempt is made in this order to determine the reasonableness of the charges made by respondent to the railroads for this service; but, inasmuch as the facilities and services used in connection with the loading and unloading of livestock are used in rendering other services in the stockyard, such facilities are included as a part of the used and useful property, and the income and expenses incident to loading and unloading are considered in arriving at respondent's net stockyard operating income.

104. The following table shows in detail the matters of income above described:

Items of Income	Income Per Books	Deductions	Income for Rate Purposes
Yardage Received—Cattle	$ 172,013.42		$ 172,013.42
" " —Calf	22,747.12		22,747.12
" " —Hogs	208,300.38		208,300.38
" " —Sheep	116,564.68		116,564.68
" " —Horses & Mules	51.65		51.65
Gross Profit from Hay Sales	71,231.28		71,231.28
" " " Corn Sales	92,409.00		92,409.00
" " " Oat Sales	1,200.91		1,200.91
" " " Bedding Sales	9,236.51		9,236.51
" " " Milled Feed Sales	2,242.64		2,242.64
Loading and Unloading	52,011.00		52,011.00
Hog Yard Pen Bedding Sales	3,254.20		3,254.20
Tractor Rentals	24.39		24.39
Weighing	3,723.60		3,723.60
Stock Car Service	212.00		212.00
Manure Sales	155.87		155.87
Cleaning and Disinfecting Income	298.20		298.20
Income from Leases	4,658.04	$ 4,322.04	336.00
Rent of Tract Right-of-Way	26,499.96	26,499.96	
Partition and Weather Protection Income	547.90		547.90
Water and Power Service Income	1,279.04		1,279.04
Miscellaneous Income	354.13		354.13
Shoes (sold employees)	31.14		31.14
Truck Cleaning Income	221.75		221.75
Immunization Plant Income	4,238.40		4,238.40
Dipping Income	171.71		171.71
Sheep Shed Rentals (Miller Lease)	2,400.00	2,400.00	
Exchange Bldg. Office Rents	41,741.36		41,741.36
" " Garage Rents	3,166.97		3,166.97
" " Misc. Income	143.34		143.34
Ground Rents—Outside Real Estate	2,678.74	2,678.74	
House Rents—Outside Real Estate	173.60	173.60	
Outside Real Estate Rentals—Stock Yard Industries	6,830.00	5,630.00	1,200.00
Outside Real Estate Rentals—Industries	1,060.00	1,060.00	
Outside Real Estate Sale Pavilion Income	49.00	49.00	
Outside Real Estate Miscellaneous	585.39	585.39	
Interest Received	10,000.12	10,000.12	
Total	$ 862,507.44	$ 53,398.85	$ 809,108.59

Expenses.

Repairs, Maintenance, and Reserve for Depreciation.

105. Among respondent's necessary expenses, and, because of their importance, the first to be considered, are the requirements for maintaining the structures and equipment in good repair, replacing them as they come to the end of their service lives, and insuring respondent against the loss of their value due to the factors, such as obsolescence, inadequacy, or changed economic conditions, which may render them useless before wear and tear, rust, rot, and decay have destroyed them.

106. Efforts have been made to differentiate expenditures for repairs and maintenance from those for replacements and, thereby, to make separate allowances for these supposedly separate expenses, but it has not been found possible so to do, except upon a purely arbitrary basis. The most reasonable basis suggested for such an allocation is that any repair which has a service life of more than a year is a replacement, while any replacement having such a life of less than a year is a repair. The purpose of this is to avoid duplication but the difficulty in its application is the impossibility of segregation. A nail driven into a pen fence may very well have a life of several years, whereas a structure built at much greater cost may not last a year. Respondent's structures and equipment, excepting a few buildings, are of a nature peculiarly susceptible to being kept in what may be termed a constant per cent condition of their reproduction new value by the ordinary processes of repair and maintenance. A worn hinge on a gate is replaced by a new one. A new bolt or post is put into a pen fence. Some bricks are renewed at a particular point in the paving. A new plank or support is incorporated in a runway or viaduct. These operations go on from day to day as a part of the ordinary repairs and maintenance, and, thereby, the major portion, in value, of respondent's used and useful structures and equipment are kept in a condition which is fairly constant. As evidence of this, respondent's structures and equipment were appraised by this Department in 1927 and their condition found to be 76.3% of new. An appraisal by the same engineer in 1929 showed the condition to be 76% of new. An appraisal made by respondent in 1922 revealed a condition of 87% and another in 1929, but by a different engineer, showed 85%.

107. During the six-year period, beginning with the year 1923 and ending with 1928, respondent expended a total of $248,999 for repairs and maintenance, of all property whether used and useful or not, or an average of slightly less than $42,000 per year. During the same period replacements of and additions to the used and useful structures and equipment amounted to $102,455, while used and useful property valued at $33,714.72 was retired, which shows that during that six-year period less than $23,000 annually was required for retirements, replacements, and additions. In other words, respondent's annual requirements for repairs, maintenance, retirements, replacements, and additions, combined, during the six-year period immediately preceding the hearing did not average in excess of $65,000. The record fails to show the portion of this amount which was for additions and the extent to which duplication exists between replacements and retirements included in the above figures.

108. The appraisal engineer employed by the Government estimated the respective service lives of the various items of respondent's depreciable property at periods ranging from five years for the cornwasher, having a value of $429, to 50 years for the Exchange Building and its annex, the Transit House Hotel, brick and concrete garages, hay barns, horse barns, company stables, and some other similar structures, and 70 years for the sewer and water lines, making a composite estimated life of 25.7 years. On the basis of these figures, an accountant employed by the Government calculated an annual straight line allowance for depreciation of $117,229 on depreciable property, including general overheads, totaling in value $3,010,835, which is $160,100 more than the value of respondent's depreciable property hereinbefore found to be used and useful. He also ascertained an annual allowance for depreciation based on depreciable property assumed by him for that purpose to be used and useful amounting to $2,494,796, which is $355,939 less than the depreciable property hereinbefore found to be used and useful. He made this computation by the so-called 6% compound interest sinking fund method and arrived at an annual figure of approximately $51,000 to which he added an arbitrary $12,000 to take care of possible lapses in the investment of the sinking fund, and recommended an annual allowance for depreciation amounting to $63,000. He was of opinion

that that amount set aside and compounded annually would be sufficient, after taking care of any necessary lapses in investment, to produce the reproduction new value of each item of depreciable property at the end of its service life.

109. Respondent contends that, based on the Government engineer's estimated composite service life of 25.7 years, it is entitled to an annual allowance for depreciation reserve of $126,980. In other words, respondent's contention is that an annual allowance computed upon the so-called compound interest sinking fund method is inadequate and that the only adequate allowance is one arrived at by the so-called straight line method.

110. It is not necessary to decide whether the sinking fund or the straight line is the proper method of computation, for there is a more certain and definite guide in respondent's actual experience over the past six years, as outlined above. It is noted that the items of respondent's depreciable property which have the short estimated service life are those which are more completely kept up by what are usually classed as ordinary repairs and maintenance and which to the least extent are affected by the elements of obsolescence and inadequacy, while the structures in regard to which there may be relatively a greater need of what are usually called replacements and wherein the elements of obsolescence and inadequacy are more active are the items whose estimated service life is practically twice as great as the estimated composite for the entire depreciable property. If there be allowed $102,000 to cover repairs, maintenance, replacements, and a reserve for depreciation, there will result after the $65,000 hereinbefore indicated for repairs, maintenance, and replacements $37,000 to cover only the depreciation which results from inadequacy, obsolescence, and changed economic conditions, none of which factors are very active in respect to respondent's property, other than the Transit House Hotel. It appears that $102,000 per annum will provide sufficient funds to keep respondent's depreciable property constantly in good condition and to replace it when it comes to the end of its service life. It is found that there should be included in the computation of annual expense for rate-making purposes an allowance of $102,000 to cover the items of repairs, maintenance, replacements, and a reserve for depreciation.

Other Expenses.

111. For the year 1928 respondent set up on its books expenses totaling $609,672.58. It is found that the expenses reasonably incurred by respondent in that year in the rendition of the services for which are charged the rates, the reasonableness of which is determined by this order, amount to $441,143; and that those not so reasonably incurred amount to $168,529.58; all of which appears in detail from the following table:

Items of Expense	Expense Per Books	Expenses Found Not to be Reasonable for Rate Purposes	Expenses Found to be Reasonable
Repairs, Maintenance, and Reserve for Depreciation:			
Repairs—Yard Structures	$ 31,653.23		
" —Exchange Bldg.	3,978.84		
" —Water Line	3,017.67		
" —Pavement	2,559.49		
" —Sewer	818.01		
" —Equipment	420.37		
" —Hay Barns	50.72		
" —Dipping	4.76		
Depreciation—Yard Structures	86,814.38		
Depreciation—Exchange Bldg.	16,194.38		
Depreciation—Dipping	95.52	$ 145,607.37	$ 43,607.37	$ 102.000.00
Office and Management Labor		21,535.18		21,535.18
Yard Labor		140,280.57		140,280.57
Yard Cleaning and Disinfecting		25,091.08		25,091.08
Current Yard Expense		3,292.95		3,292.95
Casualty Insurance		5,861.76	1,526.10	4,335.66
Store Expense		1,459.52		1,459.52
Light, Heat, and Water Expense		13,483.85		13,483.85
Company Barn Expense		4,766.58		4,766.58
Grain Elevator Expense		2,948.15		2,948.15
Estray Account		503.73		503.73
Officers Travel and Entertaining Exp.		1,023.90		1,023.90
Stationery and Office Supplies		2,245.37		2,245.37
Office Expense		142.65		142.65
General Postage Expense		216.61		216.61
Telephone and Telegraph Expense		155.53		155.53
Office Rent Paid		1,141.08		1,141.08
Tractor and Trailer		2,462.61		2,462.61
Feed Truck Expense		112.50		112.50
Hog Yards Pen Bedding Expense		210.41		210.41
Traffic Dept. Pay Roll		4,267.34		4,267.34
" " Casualty Insurance		2.25	2.25	
" " Solicitors Salaries		8,473.15		8,473.15
" " Solicitors Expenses		8,698.88		8,698.88
" " Advertising Expenses		4,233.41		4,233.41
" " Postage Expenses		140.72		140.72
" " Printing and Stationery		220.34		220.34
" " Tel. and Tel. Expenses		1,477.40		1,477.40
" " Miscellaneous		674.12		674.12

Items of Expense—Continued			
Outside Real Estate—Casualty Ins....	41.70	41.70	
" " " —Depreciation....	18,538.40	18,538.40	
" " " —Reps. and Maintenance.....	3,062.31	3,062.31	
Outside Real Estate—Misc. Expense...$	2,124.18	$ 2,124.18	$
" " " —Sale Pavilion....			
Expense.....	76.72	76.72	
Outside Real Estate Insurance.....	2,464.39	1,450.87	1,013.52
Repairs—Sheep Feeding Sheds, O.R.E.	516.67	516.67	
Bad Debts.....	94.23		94.23
Depreciation—Sheep Feeding Sheds, O.R.E.....	1,344.96	1,344.96	
Donations.....	1,485.72	895.00	590.72
Stock Show Expense.....	2,912.25		2,912.25
Engineering Expense.....	967.15		967.15
Fiscal Agent—Registrars and Trustee Expenses.....	265.62		265.62
Legal and Collection Expense.....	1,650.00		1,650.00
Miscellaneous Administrative Expense.	3,033.99	1,181.86	1,852.13
Fire and Other Insurance.....	9,418.67		9,418.67
Fidelity Insurance.....	167.09		167.09
Audit Fees.....	325.00		325.00
Directors Expenses.....	10.00		10.00
Bank Exchange.....	28.10		28.10
Taxes (Other than Federal).....	37,064.44	13,548.46	23,515.98
Insurance—Dipping Boiler.....	21.24		21.24
Labor—Dipping Expense.....	53.35		53.35
Supplies—Dipping Expense.....	87.13		87.13
Exchange Bldg.—Janitor and Elevator Service.....	8,604.94		8,604.94
Exchange Bldg.—Labor.....	2,310.14		2,310.14
" " —Electricity.....	367.81		367.81
" " —Water.....	344.05		344.05
" " —Power.....	535.34		535.34
" " —Misc. Supplies and Expenses.....	2,225.50		2,225.50
Exchange Bldg.—Casualty Insurance...	334.29	334.29	
" " —Insurance.....	1,339.66		1,339.66
" " —Heat.....	3,922.65		3,922.65
Bond Interest.....	56,250.00	56,250.00	
Immunization Plant Expense.....	1,772.41		1,772.41
Truck Cleaning Expense.....	239.11		239.11
Partition and Weather Protection.....	405.14		405.14
Manure Sales Expense.....	97.45		97.45
Federal Income Tax.....	44,441.77	17,522.09	26,919.68
	$ 609,672.58	$ 162,023.23	$ 447,649.35

112. The majority in amount of the expenses found not reasonably to have been incurred, as above stated, were incurred in connection with property which hereinbefore has been found to be not used and not useful in the rendition of the services for which are charged the rates the reasonableness of which is determined by this order. The remainder represents expenses which, while incurred in connection with the used and useful property, were not reasonably so incurred.

113. Certain donations and miscellaneous administrative expenses are considered as not reasonably incurred in the rendition of the services aforesaid because they are made from the standpoint of the citizenship of respondent in the community in which it resides and does business and are of a character commonly made by the citizens of each community. Therefore, if they be passed back to respondent's patrons in the form of rates it will result that respondent's rate assessing power will have enabled it to compel its patrons to contribute to the St. Joseph community in addition to such contributions as voluntarily they may have made in their own communities. Where donations or contributions made by respondent have appeared to be of such character as might reasonably be expected to result in some peculiar benefit to its patrons or in the maintenance of the morale of its employees, they have been included among the reasonable expenses.

114. The allowance of $4,335.66 for casualty insurance is on the basis of the average net premiums paid by respondent annually during the period of five years from 1924 to 1928, both inclusive. This more accurately indicates the expense for this item over a period of several future years than does respondent's experience for the single year, 1928.

115. Taxes other than Federal have been ascertained in accordance with the finding heretofore made as to respondent's used and useful property.

116. Bond interest is not included among the reasonable expenses for the reason that it is a capital charge and is specifically provided for in the ascertainment of the fair rate of return.

117. Federal income taxes have been computed on the basis of the net operating income resulting from the application of the fair rate of return to the fair value of respondent's used and useful property hereinbefore found, in accordance with the existing rate prescribed by the income tax laws.

RESPONDENT'S EXISTING RATES AND CHARGES ARE UNREASONABLE AND UNJUSTLY DISCRIMINATORY.

118. Respondent's existing rates and charges are found to be unreasonable and unjustly discriminatory because (1) they yield a net return which exceeds the reasonable

cost of rendering the service, including the fair return herein found upon the fair value of respondent's used and useful property and (2) because they are imposed upon a portion of respondent's patrons in amounts sufficient to cover not only the cost of rendition of the service to those patrons but also the cost of the rendition of services to other patrons for which no charges are made.

119. Hereinbefore the fair value of respondent's used and useful property has been found to be $3,382,148; the fair rate of return thereon to be 7½%, yielding a return of $253,661; respondent's reasonable expenses for rate making purposes to be $447,649; and its total operating revenues in the fair test year to have been $809,108. Therefore, its existing rates yield a net operating income of $361,459, which is $107,798 in excess of the reasonable net operating income of $253,661.

VOLUME OF BUSINESS REASONABLY TO BE ANTICIPATED IN THE NEAR FUTURE.

120. Respondent draws its receipts of livestock from a trade territory in which the production of livestock does not appear materially to be changing. Its business is more competitive and the territory within which it has a practical monopoly is more restricted than some of the seven other larger stockyards of the country, nevertheless its total annual receipts of livestock during the past twenty-five years have remained practically stationary and the record indicates that, except for cyclical fluctuations, this status will continue in the near future. It is found that in respect to the receipts of livestock, the income resultant therefrom and the expenses incurred in the handling thereof, respondent's experience during the year 1928 was fairly representative of the immediate past and what reasonably is to be expected in the near future. Therefore, such experience is found to constitute a fair basis for the computation of income and expenses in the determination of the reasonableness of respondent's rates.

RATE STRUCTURE.

121. Hereinbefore it has been shown that the structure of respondent's existing schedule of rates and charges is such that, with the single exception of livestock resold in the commission division, all yardage charges are assessed

against and collected from those who cause the livestock to come to the stockyard; that those who purchase livestock within the stockyard fall into two general classes, namely, (1) those who purchase to remove it from the stockyard and (2) those who purchase to resell or otherwise trade in it within the stockyard. To each of these classes respondent renders a warehousing service, but, from the record in this proceeding, such service rendered to the first class cannot be said to consist of more than the collection together of the purchased livestock at a given point for the purpose of convenient delivery to the purchaser within a reasonable time after the purchase. On the other hand, the class of purchasers second above described have set up their place of business within the warehouse and market place established and maintained by respondent and this they have done without charge except, in so far as respondent may benefit from the spread on the feed which they buy. It may be that respondent has the right to render free service to one class of its patrons if by so doing it does not become necessary for it to maintain higher charges upon the service rendered to others, but for respondent to maintain a large section of a valuable property and to incur numerous expenses in the rendition of a free service to one class of its patrons and then to remunerate itself through a charge on another class which is greater than necessary to cover the cost of rendition of the service to the latter class, is unjustly discriminatory as well as unreasonable. It is found, therefore, that all who receive the benefit of carrying on their business within respondent's warehouse and market place through the purchase and resale of livestock therein should pay for the services so received substantially one-half of the rates and charges imposed upon those who cause to be brought to the warehouse and market place livestock for sale. For these, and other reasons which suggest themselves from the record herein, the rates hereinafter found to constitute the maximum reasonable rates to be charged by respondent are computed and ascertained upon the basis that respondent either will impose upon all its patrons selling livestock in its stockyard the rates hereinafter prescribed or will content itself to bear the losses occasioned by concessions to any class of its patrons. In other words, the reasonable maximum rates hereinafter found are computed on the assumption that upon all live-

stock sold a second or successive time or reweighed in the stockyard for purposes of, or in connection with a resale, there will be imposed a service and/or weighing charge substantially one-half of the yardage charge upon the same species and class of livestock when received by rail.

122. The reductions necessary to render respondent's rates and charges reasonable should be applied mostly to yardage charges rather than the spreads on feeds for the reason, hereinbefore explained in detail, that the latter are the only means whereby the difference in the amount of warehousing service per head of livestock rendered by respondent to its respective patrons affects the payments which such patrons make to respondent for such services.

Reasonable Rates.

123. On the basis of all the foregoing and the entire record in this proceeding, it is found and concluded that the following constitute and are the maximum reasonable rates and charges for the following services rendered by respondent, namely:

	Yardage				
	Cattle	Calves	Hogs	Sheep and Goats	Horses and Mules
Received by rail	28¢	18¢	10¢	07¢	35¢
Resold or reweighed for purpose of sale	14¢	09¢	05¢	03½¢	17½¢
Received by vehicle or on foot	33¢	21¢	12¢	09¢	35¢
Per car maximum		$15	$11		

Feed and Bedding.

Hay	Current market price, f. o. b. stock yard, plus	60¢ per cwt.
Corn	" " " " "	50¢ per bushel
Oats	" " " " "	25¢ per bushel
Mill feed	" " " " "	80¢ per cwt.
Bedding	" " " " "	40¢ per bale

The charge made for the above by respondent shall be divisible by 5 and respondent shall amend said charges when the margin between the cost and sale price of feed and bedding varies $.05 from the margin as specified above.

Dipping or Spraying.

Cattle	35¢ per head, minimum	$35.00
Calves	15¢ " " "	35.00
Hogs	5¢ " "	
Sheep or goats	5¢ " " "	8.00

Hog Immunizing Plant.

Use of services for vaccinating hogs ..... 10¢ per head

Cattle Testing Barn.

Cattle tested for tuberculosis and other diseases:

Use of specially equipped barns, including feed, bedding, and water ..... $1.00 per head

Cleaning and Disinfecting.

Single pens	$2.50
Double pens	4.00
Chutes	2.50
Alleys	0.37 per 100 square feet
Wagons and small trucks	.75 each
Trucks of 2 tons and over	1.00 each

Bedded and Shelter Pens.

Bedded pens for hogs, $1.00 per car per night.
Bedded pens for hogs, truck division, 15¢ per pen per night.
Shelter pens for cattle 10¢ per head, calves 05¢ per head each 24 hours, $2.00 minimum each pen.

124. Had these rates been in effect throughout the year 1928, they would have produced a net operating income of $256,068. This is equivalent to 7½% of $3,414,247, which is approximately $32,099 more than the fair value of respondent's property hereinbefore found. This is an additional allowance to afford a margin to cover any errors or omissions in the determination of the fair value. The tolerance in the spread on feed and bedding will provide an additional margin which cannot be calculated in advance of collection.

ORDER.

IT IS, THEREFORE, ORDERED that the respondent, on and after forty-five days from the date of this order, cease and desist from demanding or collecting for yardage, feed, or bedding, the rate or rates shown therefor in the schedule of rates and charges filed with the Secretary of Agriculture on the 30th day of September, 1929, and designated and known as St. Joseph Stock Yards Company Tariff No. 5.

IT IS FURTHER ORDERED that the respondent on and after forty-five days from the date of this order shall not publish, demand, or collect any rate or charge for the furnishing of any stockyard service in excess of the rates and charges hereinbefore found and determined to be just and reasonable for the furnishing of such services.

IT IS FURTHER ORDERED that at least 10 days prior to the forty-fifth day from the date of this order the respondent publish, give notice of, and file with the Secretary of Agriculture, in accordance with the Packers and Stockyards Act, 1921, and the regulations of the Secretary of Agriculture thereunder, a schedule effective on the forty-fifth day from the date of this order showing all rates and charges for the stockyards services furnished by re-

spondent at the St. Joseph Stockyards, St. Joseph, Missouri, and all rules and regulations changing, affecting, or determining such rates or charges, and that no rate or charge so shown for any such stockyards service be in excess of the rate or charge hereinbefore determined to be just and reasonable for such services.

IT IS FURTHER ORDERED that the petition for a reopening of this proceeding and a rehearing herein, filed by respondent on February 11, 1931, having been considered, be and the same hereby is denied.

IT IS FURTHER ORDERED that a copy of this order be transmitted by registered mail to respondent.

IN WITNESS WHEREOF the Secretary of Agriculture has hereunto set his hand and caused the official seal of the Department of Agriculture to be affixed in the City of Washington, District of Columbia, this 20th day of July, 1931.

R. W. DUNLAP,
Acting Secretary of Agriculture.

EXTRACT FROM TESTIMONY OF JOHN J. BACHMANN, IN CHARGE OF AUDITS AND ACCOUNTS, PACKERS AND STOCKYARDS DIVISION, DEPARTMENT OF AGRICULTURE. (RECORD, pp. 573-575.)

Recross Examination.

Income for Rate-Making Purposes.

The following is the table I have prepared for the year 1932 comparable to the items listed on pages 2, 3 and 4 of Government Exhibit No. 124.

ST. JOSEPH STOCK YARDS CO.
INCOME 1932

	Total	Additions	Include	Exclude
Yardage Received	$415,699.86		$415,699.86	
Gross Hay Sales	63,260.86		63,260.86	
Gross Corn Sales	84,241.54		84,241.54	
Gross Oat Sales	759.74		759.74	
Gross Bedding Sales	7,281.02		7,281.02	
Gross Milled Feed Sales	8,579.54		8,579.54	
Hog Pen Bedding	2,323.95		2,323.95	
Milling Feed Revenue	5,816.04		5,816.04	
Loading & Unloading	19,592.25		19,592.25	
Exch. Bldg.—Office Rents	38,714.50		38,714.50	
Exch. Bldg.—Garage Rents	2,705.73		2,705.73	
Exch. Bldg.—Misc. Revenue	93.53		93.53	
Weighing Cars	3,141.73		3,141.73	
Stock Car Service	52.00		52.00	
Cleaning, Sanding & Disinfecting	82.65		82.65	
Manure Sales	40.01		40.01	
Car Partitions, etc.	111.40		111.40	
Immunization Plant	1,649.50		1,649.50	
Truck Washing	733.25		733.25	
Yard Truck Revenue	—		—	
Tractor and Trailer	5.00		5.00	
Company Barn	—		—	
Estrays	161.89		161.89	
Miscellaneous Income	133.68		133.68	
Yard Leases & Rentals	1,820.18		1,720.22	99.96
Shoes (Employees) Sold	—		—	
Feeding Facility Yardage	3,320.75			3,320.75
Rental Feeding Facilities	690.00			690.00
Rent—Tracks & Right-of-Way	—		—	
Rent—O. S. R. E. Industries	270.00			270.00
Rent—O. S. S. Y. Industries	2,970.00		1,290.00	1,680.00
Rent—Houses—Outside Acct.	47.10			47.10
Rent—Ground—Outside Acct.	472.50			472.50
Dipping Income	—		—	—
Water, Elec. & Heat Sales	1,847.33		1,847.33	
Interest	5,101.59			5,101.59
Bad Debts	1.40		1.40	
Sales Pavilion Income	—		—	
Misc. O. R. E. Inc.	79.68		79.68	(Water Sales)
Dividends—Casualty Ins.	—	5,500.00	5,500.00	—
Yardage, Traders Volume	—		—	
Farm Operations	115.86			115.86
	$671,916.06	5,500.00	665,618.30	11,797.76

ST. JOSEPH STOCK YARDS CO.

EXPENSES

YEAR 1932

	Total	Additions	Include	Exclude
Office & Management Payroll	$ 23,528.68		$ 23,528.68	
Misel. Adm. Expense	6,071.50		71.50	6,000.00
Officers Travel & Entertainment	681.27		681.27	
Legal & Collection	1,500.00		1,500.00	
Pensions	5,268.74		5,268.74	
Donations & Subscriptions	2,423.46		302.88	2,120.58
Taxes	43,475.84		37,547.60	5,928.24
Depreciation	122,509.92		50,000.00	72,509.92
Insurance	13,701.59		12,324.58	1,377.01
Valuation Hearing	3,082.54			3,082.54
Bond Interest	46,014.02			46,014.02
Bond Discount	4,855.83			4,855.83
Office Rent	1,782.00		1,782.00	
Office Supplies	682.67		682.67	
Office Expense	120.24		120.24	
Office Postage	267.07		267.07	
Telephone & Telegraph	903.31		903.31	
Store House Expense	1,117.60		1,117.60	
Engineering	3.41		3.41	
Fiscal Agents, Registrars, etc.	308.12		308.12	
Yard Pay Rolls	119,956.40		119,956.40	
Yard Cleaning & Disinfecting	19,241.37		19,241.37	
Yard Current	3,749.71		3,749.71	
Yard Casualty Insurance	3,528.75		3,528.75	
Estrays	375.07		375.07	
Water, Electricity & Heat	13,164.98		13,164.98	
Company Barn	1,922.28		1,922.28	
Yard Truck	120.47		120.47	
Cost of Hay Sold	26,040.85		26,040.85	
Cost of Corn Sold	52,069.29		52,069.29	
Cost of Oats Sold	416.10		416.10	
Cost of Bedding Sold	2,486.07		2,486.07	
Cost of Milled Feed Sold	4,421.29		4,421.29	
Cost of Hog Pen Bedding	177.96		177.96	
Milling Feed Expense	1,749.70		1,749.70	
Grain Elevator	1,005.70		1,005.70	
Weighing	3,479.28		3,479.28	
Dipping	85.56		85.56	
Car Partitions, etc.	19.72		19.72	
Immunization Plant	453.09		453.09	
Repairs—Yard Structures	12,153.72		12,153.72	
Repairs—Water Lines	2,602.90		2,602.90	
Repairs—Sewers	561.76		561.76	
Repairs—Paving	1,074.16		1,074.16	
Repairs—Hay Barns	247.54		247.54	
Repairs—Equipment	319.88		319.88	
	549,721.41		407,833.27	141,888.14

ST. JOSEPH STOCK YARDS CO.

EXPENSES

YEAR 1932 (Continued)

	Total	Additions	Include	Exclude
Brt. Forward	549,721.41		407,833.27	141,888.14
Repairs—Outside Property	796.72		412.68	384.04
Repairs—Exchange Bldg.	1,755.35		1,755.35	
Repairs—Feeding Facilities	281.76			281.76
Payroll—Traffic Dept.	6,804.00		6,804.00	
Solicitors Salaries—Traffic Dept.	14,921.00		14,921.00	
Casualty Insurance—Traffic Dept.	2.28		2.28	
Postage—Traffic Dept.	326.55		326.55	
Printing & Stationery—Traffic Dept.	371.80		371.80	
Telephone & Telegraph—Traffic Dept.	1,681.50		1,681.50	
Misc.—Traffic Dept.	1,168.24		1,168.24	
Solicitor's Expense—Traffic Dept.	14,312.25		14,312.25	
Advertising	3,870.11		3,870.11	
Stock Show	2,764.99		2,764.99	
Exchange Bldg.—Labor	7,029.05		7,029.05	
Exchange Bldg.—Casualty Ins.	265.79		265.79	
Exchange Bldg.—Elec., Water Heat	5,055.68		5,055.68	
Exchange Bldg.—Supplies	1,635.39		1,635.39	
Truck Washing Expense	234.01		234.01	
Sale Pavilion Expense	3.50		3.50	
Misc. O. R. E. Expense	2,334.07			2,334.07
Casualty Ins. O. R. E.	36.96			36.96
Tractor & Trailer Expense	623.93		628.93	
Audit Expense	330.05		330.05	
Repairs—Furn. & Fixt.				
Bad Debts	320.52		320.52	
Cost of Shoes Sold (Employees)				
Bank Exchange				
Manure Sales Expense				
Bond Issue Expense				
Interest				
	616,646.91		471,721.94	144,924.97

There was an item of water sale and profit listed on page 2 of Government Exhibit No. 124 as a part of the item "water, electricity and heat, $2,686.99." This amount is analyzed on page 142 of Government Exhibit No. 121-A. It was sold to Stevens and Williams. This particular item was $514.55, and the profit margin was $326.20, both of which items are included on page 2 of Government Exhibit No. 124 in the amount $2,686.99. The water used by Stevens and Williams was in connection with feeding

operations they were performing. To the extent that there was any profit in that transaction that would be revenue in addition to the revenue charged under item 12-A of respondent's tariff. The figures for the year 1932 were handled in exactly the same way as the figures for 1931. There may be one or two small items not shown in 1931 which are in 1932, because there were no similar items in 1931. I followed the same rule. I don't recall that there were any items appearing in 1931 that did not appear in 1932, but I think the reverse is true. That is the last item of income for 1932, farm operations. I understand it was the net proceeds from farming operations. That is the only item that I recall in the 1932 statement which does not appear in the year 1931. On pages 2, 3 and 4 of Government Exhibit No. 124, occasionally opposite an item appear two small dashes, which indicate that in one or more of the six years which have been analyzed an item of income or expense designated by that particular name will be found, although the same item may not be found in each of the six years. I followed the same practice in the 1932 statement.

ALLEGATION CONCERNING GOING CONCERN VALUE DETERMINED BY SECRETARY IN FIRST DECISION OF JULY 20, 1931, CONTAINED IN APPELLANT'S PETITION TO ENJOIN SAID DECISION AND ORDER.

"(G) That in said unlawful and pretended valuation of petitioner's stockyards property, said Secretary made a finding that the going concern value of petitioner's property is $300,000; that no evidence with respect to the going concern value of petitioner's property was offered in said hearing on behalf of said Secretary; that the only evidence offered in said hearing with respect to the going concern value of petitioner's stockyards property was that offered on behalf of petitioner; that the undisputed evidence of record in said hearing establishes that petitioner's stockyards property has a going concern value of not less than $666,663; that said evidence on behalf of petitioner has been unlawfully disregarded by said Secretary in his said Findings, Conclusions and Order, thereby depriving petitioner of its property in the sum of $366,663; that the action of said Secretary in depriving peti-

tioner of its going concern value in the sum of $366,663 is unsupported by any evidence of record; is contrary to the only evidence of record; is contrary to the weight of the evidence; is arbitrary; is confiscatory; and deprives petitioner of its property without due process of law, in violation of the Fifth Amendment to the Constitution of the United States."

Answer of United States and Secretary of Agriculture to Said Allegation in Appellant's Said Petition.

"(g) Answering Paragraph IX of said petition, and Sub-paragraph (G) thereof, defendants admit that there is included in the aforesaid fair value an item of $300,000 as and for the going concern value of petitioner's property and business; but deny that no evidence with respect to the going concern value of petitioner's property was offered on behalf of said Secretary at the hearing described in said petition; and allege that much evidence tending to show the going concern value of petitioner's property and business was introduced on behalf of said Secretary at said hearing. Defendants further deny that the only evidence offered at said hearing with respect to the going concern value of petitioner's property was that offered on behalf of petitioner; or that the undisputed evidence of record in said hearing establishes for petitioner's property a going concern value of $666,663, or any sum in excess of $300,000; or that evidence offered by or on behalf of petitioner was disregarded by said Secretary, either unlawfully or otherwise; or that the Order deprives petitioner of property in the sum of $366,663, or in any sum whatsoever. Further answering said Sub-paragraph (G) defendants say that other values found by the Secretary and included in said fair value of $3,382,148 include and comprise all the going concern value which inheres in or attaches to petitioner's property and business, wherefore said Secretary was not required to include in said fair value any further or separate allowance for going concern value, and further that said further and separate allowance of $300,000 is more than adequate. Except as herein otherwise admitted, defendants deny each and every allegation of said Sub-paragraph (G)."

EXTRACT FROM DECISION OF SECRETARY IN DOCKET NO. 301, DENVER UNION STOCK YARD COMPANY CASE.

UNITED STATES OF AMERICA
BEFORE THE
SECRETARY OF AGRICULTURE.

BUREAU OF ANIMAL INDUSTRY DOCKET NO. 301.

Secretary of Agriculture
vs.
Denver Union Stock Yard Company,
Respondent.
} Proceedings, Findings of Fact and Order.

* * * * * *

GOING CONCERN VALUE

87. Respondent contends that in addition to any and all other values which may be included in the ascertainment of fair value and the rate base it is entitled to have allowed and included an item of $807,000 as and for going concern value. Respondent's claim in this respect is based upon the testimony of the witness Howson, an engineer who made an elaborate mathematical computation in an effort to show the amount of this so-called value. The method recommended by him is an attempt to estimate the cost of reproducing a business which respondent now enjoys by assuming that some person or persons desirous of operating a stockyard at Denver, Colorado, found themselves in the peculiar position whereby they could purchase respondent's property and business as a going, operating concern, or could construct exactly similar property, and if they decide upon the latter course, the respondent would immediately cease to operate its business. The witness adopts the preliminary ten months period and the construction period used by the respondent's engineer and assumes that during the first two years of that period all the business theretofore enjoyed by respondent would be dissipated. He then sets out to determine what it would cost the new concern to attach to its new stockyard the amount of business, and its resultant income, which re-

spondent now enjoys. To do this he seeks to ascertain the period of time which would elapse after the new yard began operations and before its receipts of livestock and resultant income would be equal to those now possessed by respondent. He also seeks to ascertain what percentage of respondent's present receipts of livestock would be recovered by the new yard during each year of the aforesaid period of recovery. He estimated the operating expenses for each year of the period of recovery as the result of an analysis of the various items of operating expense during the years 1928 and 1929. The expenses are then deducted from the income expected to be derived from the imagined receipts of livestock and thus the possible deficit is estimated for each year of the period of recovery of business.

88. For the purpose of determining a period of recovery of business the witness Howson interviewed three men engaged in the livestock commission business at the Denver market and two of respondent's officers. These men were asked to estimate the number of years which would be required to regain the business if the new yard had begun operations. They were also asked to estimate the probable rate of recovery during each year of the period estimated. The estimates ranged from seven to twelve years as the period required for the recovery of business. He did not accept these estimates as controlling, but based his calculations upon the assumption that the receipts would be recovered during the fifth year of operations. He aggregates the present worth of the supposed deficits into a total of approximately $807,000 and says that whether the new company built its own new yard at the cost of reproduction new shown in this record or purchased the existing yard with the attached business at the cost of reproduction new plus $807,000 as going concern value, the ultimate cost to the new company would be exactly the same. In arriving at these figures he accepts the respondent's valuation of the land and physical structures and assumes that the respondent is not now earning more than a fair return. Therefore, he draws the conclusion that $807,000 is the fair value of the element of going concern in respondent's business.

89. Rather than adopting as a basis for his calculations such deficits as may have occurred in the past, the witness projects his calculations into the future and undertakes to

construct certain hypothetical deficits based upon certain assumed conditions. The assumptions have no foundation in fact. It is not shown that the conditions assumed have ever come within the experience of the witness or those whom he interviewed. Obviously this method is capable of expansion to produce any desired amount of going concern value merely by increasing the imagined period of recovery or slowing up the rate of recovery. For these reasons and others, the method suggested by witness Howson for measuring going concern value is not herein adopted.

90. It is found that the going concern value of respondent's business and its property used and useful in the rendition of the services for which are charged rates, the reasonableness of which is hereinafter determined, is $295,000.00.

EXTRACT FROM DECISION OF SECRETARY IN DOCKET NO. 344, OMAHA STOCK YARDS CASE.

UNITED STATES OF AMERICA
BEFORE THE
SECRETARY OF AGRICULTURE.

BUREAU OF ANIMAL INDUSTRY DOCKET NO. 344.

Secretary of Agriculture
vs.
Union Stock Yards Company of Omaha, Ltd.,
Respondent.
} Proceedings, Findings of Fact and Order.

* * * * * *

Going Concern Value:

86. In addition to the value of the land and physical structures there is an element of value inherent in this property as an operating business which element is commonly referred to as going concern value. Respondent's witness Hyder placed in evidence a summary of respondent's contentions as to the total value of its property. Under the general item designated "intangibles" which has previously been discussed are included certain items which in so far as they have merit are entitled to consideration in connection with the allowance for going concern. Respondent also introduced evidence through the witness Howson for the purpose of showing specifically the amount which it contended should be allowed for going concern value. This witness made an elaborate mathematical computation in an effort to show the amount of such value. The method recommended by him is an attempt to estimate the cost of reproducing the business which respondent now enjoys by assuming that some person or persons desirous of operating a stockyard at Omaha, Nebraska, found themselves in a peculiar position whereby they could purchase respondent's property and business as a going, operating concern or could construct an exactly similar property and if they decided upon the latter course the respondent would immediately cease to operate its business. The witness adopts the period of construction used by respondent's en-

gineer and assumes that during the period of three years all of the business theretofore enjoyed by the respondent would be dissipated. He then sets out to determine what it would cost the new concern to attach to its new stockyard the amount of business and its resultant income which respondent now enjoys. To do this he seeks to ascertain the period of time which would elapse after the new stockyard began operations and before its receipts of livestock and resultant income would be equal to those now possessed by respondent. He also seeks to ascertain what percentage of respondent's present receipts of livestock would be recovered by the new yard during each year of the aforesaid period of recovery. He estimates the operating expenses for each year of the period of recovery as the result of an analysis of the various items of operating expense during the years 1926 to 1930, inclusive. The expenses are then deducted from the income expected to be derived from the imagined receipts of livestock and thus the possible deficit is estimated for each year of the period of recovery of business.

87. For the purpose of determining the period of recovery of this business the witness Howson interviewed three men engaged in the livestock commission business at the Omaha market and one of respondent's officers. These men were asked to estimate the number of years which would be required to regain the business if the new yard had begun operations. They were also asked to estimate the probable rate of recovery during each year of the period estimated. Using the weighted average of these estimates he determined that 83.6% of the business would be recovered at the end of the fifth year after the reopening of the yard and that complete recovery of the business would be accomplished approximately seven years after such reopening. The witness aggregates the present worth of the supposed deficits into an amount of $1,893,597 and says that whether the new company built its own new yard at the cost of reproduction new shown in the record or purchased the existing yard with the attached business at the cost of reproduction new plus $1,893,597 as going concern value, the ultimate cost to the new company would be exactly the same. In arriving at these figures the witness accepted respondent's valuation of the land and physical structures and assumes that the respondent is not now earning more than a fair return. He draws

the conclusion that $1,893,597 is the value of the element of going concern in respondent's business.

88. Rather than adopting as a basis for his calculations such deficits as may have occurred in the past, the witness projects his calculations into the future and undertakes to construct certain hypothetical deficits based upon certain assumed conditions. The assumptions have no foundation in fact. It is not shown that the conditions assumed have ever come within the experience of the witness or those whom he interviewed. Obviously this method is capable of expansion to produce any desired amount of going concern value merely by increasing the imagined period of recovery or slowing up the rate of recovery of the business. The effect of adopting such a method of determining going concern value would result in showing a higher going concern value for a concern whose officers were inefficient and whose policy was not aggressive and where the period of recovery of business would extend over many years than would be true in the case of a corporation having efficient officers and an aggressive policy which resulted in the recovery of the business in a comparatively short time. The method of ascertaining going concern value as outlined by this witness is not adopted.

89. Respondent's business has a history extending back for many years. Its business has been well managed; during the early period of its history it showed a steady growth and during the past 10 or 12 years it appears that the business has reached a stage of comparative stability. It may be presumed that the business will continue in the future substantially as it has during the past 10 or 12 year period. During its entire history the business has paid regular dividends to the stockholders of the respondent company. The company has now reached the stage where it has efficient officers and its employees have had years of experience. The operations of the company function smoothly. Based on the entire evidence in the record it appears that the property and business of the respondent have a substantial going concern value and it is found that $850,000 represents the element of going concern value of the respondent's property and business.

ABSTRACT FROM TESTIMONY OF GOVERNMENT ENGINEER, HERMANN C. HENRICI, RECORD 429-435.

Depreciation Reserve.

DEPRECIATION AND COMPOSITE LIFE TABLES.

The probable life of the structures of respondent is shown in Government Exhibit No. 114, the section of the exhibit consisting of 4 pages entitled "Depreciation and Composite Life" (T. 489). I have found separate life expectancies for various units of property and from those calculated a composite life for the property as a whole of 24.8 years. As a background for this portion of the exhibit I had the record of some twenty commissions and engineers in which the life of various buildings and structures was recorded. I had the observation of each particular building or structure in mind with a view to all the elements which would cause it to be depreciated to zero. Having in mind all the causes of depreciation, such as rot, rust, decay, wear and tear, obsolescence and inadequacy, I placed the life expectancy opposite each item of property (T. 490). In the first column lettered A the reproduction new value of the property is given. In the second column, B, is the life expectancy in terms of years. In the third column, C, is the rate of depreciation per year. It is 100 divided by the life expectancy in years. Column B is the result by applying the percentage in Column C against the Value in Column A which gives the amount of depreciation reserve estimated on a so-called straight-line basis. I had available various reports made by public utility commissions and engineers which gave the life period of buildings which had been erected and had come to the end of their lives. Those were all types of buildings, including office buildings, hotels, factories, residences, and apartment houses (T. 491). These did not include stockyard structures such as pens and fences. The most of the buildings included in these reports were either in downtown business districts, industrial areas, residential districts of cities, or in small towns and isolated communities. From my knowledge gained from the reports and my own experience and observation, wear and tear, rust, rot and decay are not large factors in bringing buildings of this country to the end of their lives. Obsolescence is the large factor. It is the result of American progress and the growth of Ameri-

can cities. Inadequacy plays a considerable part in the end of the lives of these buildings (T. 492). When there is an office building on a downtown lot and the growth of the city and the business of the city lead the owners of that building to believe they could rent much more space if they had more space to rent, it is usually neither practical nor possible to erect an annex to the buliding. The only thing is to tear down the old building and erect a larger one, or erect a larger one some place else. This same thing is true of obsolescence. The American taste and the advance in the arts combined are tending more to the luxuries of life in recent years. The demand is for buildings, whether they be hotels, apartment houses, office buildings, or residences, with what we call the modern improvements. All this tends to bring these buildings to the end of their lives (T. 493). From a purely structural standpoint most of these buildings were in usable condition when torn down. The reports I have studied include factory buildings or other industrial buildings. Some of the major factors which bring such buildings to the end of their useful lives are as follows. Originally buildings were built of frame structure. Cost of insurance and the safety of occupancy required that fireproof buildings be erected in place thereof, or a building was built to carry a certain load per square foot of floor area and the demands of the occupants were such that those loads be increased. In such case it is sometimes more economical to tear down the building, and put up a building of a stronger frame, a different type of building. That may come from a change in the use to which the building is being put (T. 494). Factories or other industrial buildings ofttimes come to the end of their lives through the insolvency of the owner and his ceasing to use them. At other times they come to the end of their lives because it is no longer economical to continue in that business at that place. I have observed what has happened in the jobbing district of the city of St. Joseph. I have observed that a number of buildings once used and occupied are now closed (T. 495). I do not know whether or not any of the buildings at the St. Joseph Stock Yards have become inadequate. If the Exchange Building became inadequate it would be practicable to erect an annex to take care of that inadequacy (T. 497). Insolvency is one of the elements that enters into the life of the property. For example, a Kansas City firm became insolvent after a good many

years of successful operation of a factory building. Parts of the building had to be remodeled for other tenants and other parts just simply had to be destroyed in order to save taxes (T. 498). Life tables simply take into consideration the time elapsing from the time the building was built until the building ceased to exist. In all cases the reason for its ceasing to exist is not known. It was torn down for some reason but that represents the life of that building. A percentage could not be applied to the life tables as being equivalent to the amount due to insolvency. The fact is that these life tables which have been used as a basis were obtained from buildings all over the United States and I could not say just how much was due to insolvency but I imagine not a great percentage (T. 499). I have not taken into consideration the question of the insolvency of stockyards companies because I knew of no stockyards that had become insolvent. I know of none that have been abandoned (T. 502). The competitive factors in respect to procuring tenants in the Exchange Building are not the same as exist in downtown areas (T. 503) There is no other such space for rent within the area of the St. Joseph Stock Yards other than provided by the stockyards itself. There are some buildings for rent which might be used as offices outside of the stockyards area. They are two or three blocks away in the business district of South St. Joseph, each of the stockyards. Intervening are store buildings and residences. It would not be practicable for persons conducting their business upon the stockyards to maintain offices in the buildings to which I have referred (T. 504). In reports to which I had access and to which I have referred there are included properties of railroads in the nature of pens and fences. They would be partly pens and fences for holding livestock. I do not know what type of livestock pens were included in connection with the railroads. They are of a general type of construction. These tables did not include any pens or fences in what are known as public markets. They did not include any property of any kind in a public stockyards (T. 505).

Government Exhibit No. 114.

The following is the depreciation and composite life table taken from Government Exhibit No. 114:

A—New Value. B—Life in Years. C—Annual Rate of Depreciation in per cent. D—Amount of Depreciation annually.

Pages	Structure	A	B	C	D
1	Exchange Building	330724	40	2.5	8268
53	Exchange Building Annex	15041	40	2.5	376
60	Hose House and Equipment	2409	30	3.3	79
63	Garage, Brick and Concrete	4885	35	2.9	142
66	Garage, Brick and frame	3323	30	3.3	110
68	Garage, frame	2215	20	5.0	111
70	Receiving Office	12776	40	2.5	319
83	Underground Water	1285	50	2.0	26
84	Outside Electrical	638	15	6.7	43
108	Cattle Commission Men's Pens and Alleys	232038	15	6.7	15547
163	Cattle Traders Pens & Alleys	89206	15	6.7	5977
191	Cattle Packers Pens & Alleys	90764	15	6.7	6081
216	Cattle Drive-In Section	7864	15	6.7	527
219	Cattle Scale #3	10369	30	3.3	342
225	Cattle Scale #4	10454	30	3.3	345
226	Cattle Scale #5	10454	30	3.3	345
226	Telephone Booths	40	15	6.7	3
227	Cattle Scale #6	9740	30	3.3	322
231	Cattle Drive-In Scale	3271	30	3.3	108
234	R. R. Unloading Docks	49445	40	2.5	1236
239	Branding and Dehorning Chutes	2087	15	6.7	140
243	Tuberculosis Testing Barn	8247	20	5.0	412
245	Cattle Dip	2097	30	3.3	69
247	Hay Barns Nos. 1 to 8	82825	40	2.5	2071
251	Hay Scale and Office	2397	40	2.5	60
255	Packers Cattle Drive	3341	15	6.7	224
256	Yard Lighting	576	15	6.7	39
257	Armour Holding Pens	4540	15	6.7	304
258	Sewer and Water Outside Area	1519	50	2.0	30
259	Sheep—Commission Section	65760	20	5.0	3288
267	Sheep—Packers Section	29442	20	5.0	1472
269	Sheep—R. R. Unloading Docks	12576	40	2.5	314
272	Sheep Dip	7109	30	3.3	235
278	Sheep Scale No. 1	9768	40	2.5	244
285	Outlet Sewers (Sheep Division)	1076	50	2.0	22
305	Hog Commission Section	246102	20	5.0	12305
348	Hog Packers & Order Buyers Section	83255	20	5.0	4163
362	Hog Drive-In Section	31450	20	5.0	1573
376	Hog Scale No. 10	8398	40	2.5	210
384	Hog Scale No. 11	6266	40	2.5	157
386	Truck Hog Scale	1917	40	2.5	48
390	Cripple Scale	247	25	4.0	10
391	Hog R. R. Unloading Docks	45742	40	2.5	1144
402	Packers Drive	1341	15	6.7	90
403	Water—Outside Area	273	50	2.0	5
404A	Packers Covered Drive	6062	20	5.0	303
406	Immunization Plant	15731	30	3.3	519
425	Corn Elevator	14457	50	2.0	289
438	Timber Water Tanks	11368	20	5.0	568
443	R. R. Unloading Docks	18426	40	2.5	461
457	Southern Cattle Division Pens and Alleys	13064	15	6.7	875
466	Cattle Scale #2	5460	30	3.3	180
470	R. R. Unloading Dock	21880	40	2.5	547

Pages	Structure	A	B	C	D
474	Packers Drive	1292	15	6.7	87
475	Company Stable	12989	40	2.5	325
482	Shed E. of Company Stable	210	20	5.0	11
483	Miscellaneous Fence, etc.	528	15	6.7	35
487	Horse & Mule Fences and Gates	1225	15	6.7	82
490	Horse Barn No. 1	17363	40	2.5	434
494	Shed between Horse Barn No. 1 and No. 2	830	20	5.0	42
496	Shed near Horse Barn No. 1	359	20	5.0	18
497	Horse Barns Nos. 2 & 3	26116	40	2.5	653
502	Shed between Horse Barn No. 3 & 4	822	20	5.0	41
504	Horse Barns Nos. 4 & 5	32959	40	2.5	824
509	Shed No. 6	2060	20	5.0	103
512	Horse Barn No. 20	15743	40	2.5	394
520	Horse Barn No. 21	31005	40	2.5	775
528	Horse Barn No. 22	3712	40	2.5	93
529	Shed No. 23	3967	20	5.0	198
533	Blacksmith Shop	1025	20	5.0	51
535	Sewer and Water—Horse Div.	5109	50	2.0	102
536	Reinforced Concrete Reservoir	16175	40	2.5	404
539	Plumbing & Paint Shop	1388	30	3.3	46
542	General Yard Lighting	2607	15	6.7	175
544	Foot Subway	11790	50	2.0	236
546A	Cement Storage House	607	20	5.0	30
549	Outside Paving and Sewers	145436	35	2.9	4218
551	Brick and Concrete Garage	3550	40	2.5	89
554	Transit House	132726	40	2.5	3318
597	Yard Lighting E. of R. R.	260	15	6.7	17
600	Valve Connection to Swift & Co.	1342	25	4.0	54
601	Miller Sheds (Rockhold)	15190	20	5.0	760
610	Thomas McKee Shed	840	20	5.0	42
614	Dutton Sheds (Swift)	5535	20	5.0	277
627	Rountree Shed (Swift)	17011	20	5.0	851
636	Corrigan's Office	1080	40	2.5	27
638	Harness Shop	11932	40	2.5	298
651	Journal Building	17993	40	2.5	450
666	Leased Lots Southern Cattle Division	13024	15	6.7	873
671	Fire Protection Equipment	369	20	5.0	18
672	Swift Viaduct	1549	20	5.0	77
	"A" Totals	2209458	24.8 (av.)	4.037	89206
	Errors and Omissions 5%	110473			4460
	"B" Totals	2319931	24.8	4.037	93666
	Engineering and Architects 5%	115997			4683
	Legal Expenses 1%	23199			937
	General Salaries & Expenses 2%	46399			1873
	Liability Insurance 6.1% of Labor Only	51015			2059
	Fire Insurance 0.5%	11600			468
	Taxes During Construction	24126			974
	"C" Totals	2592267	24.8	4.037	104680
	Interest During Construction 7% for 6 months	90729			3663
	"D" Totals	2682996	24.8	4.037	108323
	Additions and Betterments (Book Value)	128041			5169
	"E" Totals				

RESTATEMENT OF MAJOR ITEMS IN GOVERNMENT EXHIBIT 114, GROUPING PROPERTY OF SAME ESTIMATED LIFE.

	Value New	Life in Years.
Underground Water	$ 1,285	50
Sewer and Water Outside Area	1,519	50
Outlet Sewers (Sheep Division)	1,076	50
Water—Outside Area	273	50
Corn Elevator	14,457	50
Sewer and Water—Horse Division	5,109	50
Foot Subway	11,790	50
	$ 35,509	
Exchange Building	330,724	40
Exchange Building Annex	15,041	40
Receiving Office	12,776	40
R. R. Unloading Docks	49,445	40
Hay Barns Nos. 1 to 8	82,825	40
Hay Scale and Office	2,397	40
Sheep—R. R. Unloading Docks	12,576	40
Sheep Scale No. 1	9,768	40
Hog Scale No. 10	8,398	40
Hog Scale No. 11	6,266	40
Truck Hog Scale	1,947	40
Hog R. R. Unloading Docks	45,742	40
R. R. Unloading Docks	18,426	40
R. R. Unloading Dock	21,880	40
Company Stable	12,989	40
Horse Barn No. 1	17,363	40
Horse Barns Nos. 2 & 3	26,116	40
Horse Barns Nos. 4 & 5	32,959	40
Horse Barn No. 20	15,743	40
Horse Barn No. 21	31,005	40
Horse Barn No. 22	3,712	40
Reinforced Concrete Reservoir	16,175	40
Brick and Concrete Garage	3,550	40
Transit House	132,726	40
Corrigan's Office	1,080	40
Harness Shop	11,932	40
Journal Building	17,993	40
	$941,524	
Garage, Brick and Concrete	4,885	35
Outside Paving and Sewers	145,436	35
	$150,321	
Hose House and Equipment	$ 2,409	30
Garage, Brick and Frame	3,323	30
Cattle Scale #3	10,389	30
Cattle Scale #4	10,454	30
Cattle Scale #5	10,454	30
Cattle Scale #6	9,740	30
Cattle Drive-In Scale	3,271	30
Cattle Dip	2,097	30
Sheep Dip	7,109	30
Immunization Plant	15,731	30
Cattle Scale #2	5,460	30
Plumbing & Paint Shop	1,388	30
	$ 81,805	

	Value New	Life in Years.
Cripple Scale	247	25
Valve Connection Swift & Company	1,342	25
	$ 1,589	
Garage, Frame	2,215	20
Tuberculosis Testing Barn	8,247	20
Sheep—Commission Section	65,760	20
Sheep—Packers Section	29,442	20
Hog Commission Section	246,102	20
Hog Packers & Order Buyers Section	83,255	20
Hog Drive-In Section	31,450	20
Packers Covered Drive	6,062	20
Timber Water Tanks	11,368	20
Shed E. of Company Stable	210	20
Shed between Horse Barn No. 1 and No. 2	830	20
Shed near Horse Barn No. 1	359	20
Shed between Horse Barns No. 3 & 4	822	20
Shed No. 6	2,060	20
Shed No. 23	3,967	20
Blacksmith Shop	1,025	20
Cement Storage House	607	20
Miller Sheds (Rockhold)	15,190	20
Thomas McKee Shed	840	20
Dutton Sheds (Swift)	5,535	20
Roundtree Shed (Swift)	17,011	20
Fire Protection Equipment	369	20
Swift Viaduct	1,549	20
Total	$534,275	
	$1,745,023	

EXTRACT FROM DECISION OF INTERSTATE COMMERCE COMMISSION IN TELEPHONE AND RAILROAD DEPRECIATION CHARGES, 118 I. C. C. 295, AT PAGES 353-356, INC.

"While it is generally agreed that depreciation expense should be evenly distributed in this way, not all factors in depreciation operate gradually, the effect of some being abrupt. The principle is fair, however, that *the cost resulting from the using up of property in service should be shared equally by the years which have had the benefit of the use.* The chief difference of opinion is as to whether the equal annual or monthly charges should be determined by the straight-line or the sinking-fund method.

"*The straight-line method is much the simpler of the two.* Under it the annual depreciation charge is obtained by merely dividing the estimated service value by the number of years of estimated service life. Thus, with a service value of $1,000 and a service life of 10 years, the annual depreciation charge is $100. Under the sinking-fund

method it is assumed that the depreciation installments will earn compound interest. The annual depreciation charges are so fixed, in other words, that these yearly payments plus the interest accumulations will equal service value at the expiration of service life. Assuming property with a service value of $1,000 and a service life of 10 years, and assuming interest at 5 per cent compounded annually, an annual charge of $79.50 will produce the required $1,000 at the end of the 10-year period. It will be seen that the annual charge is materially less under the sinking-fund than under the straight-line method.

"In considering the sinking-fund method it should be borne in mind that the depreciation reserve provided for in our classification is merely a piece of accounting machinery. Annual or monthly charges for depreciation are made to operating expense, and to offset these charges annual or monthly credits in like amounts are made to the reserve. The depreciation charges represent money reserved from earnings, so long as the company is not operated at a deficit. In ordinary practice, however, this money is not earmarked and segregated into a separate fund. It goes into the general cash fund and is available for corporate purposes. As a result it is ultimately used in the purchase of plant; in other words, as items of old property are used up through depreciation they are replaced by other items of new property of like cost. *In this way capital is maintained unimpaired.* The sinking-fund method, however, is based on the theory that money reserved from earnings by the depreciation charges shall be treated as a separate fund, the earnings from which, when invested, will not be available for general corporate purposes but will be returned to the fund and allowed to accumulate. *Obviously, also, if this method is to operate according to its design, the fund must be so invested that it can be depended upon to produce regular earnings at not less than a certain minimum rate. To produce this result with sufficient certainty the fund must ordinarily be invested, not in the plant of the company, but in approved investment securities.*

"The straight-line method has the approval of the telephone companies and of the steam railroad companies, if depreciation charges are to be required. *It also has the approval of most of the State and municipal authorities who were represented in these proceedings.* Certain of the State commissions prefer the sinking-fund method.

Upon analysis it develops that this preference rests upon a belief that the rate base should be the investment in the property of the company without deduction for accrued depreciation. This fact suggests and illustrates the radical difference in the theories underlying the two methods.

"*The straight-line method is based upon the theory that the property or capital of the company is continually being consumed in service and that the owners should be reimbursed therefor concurrently with the consumption.* Under this theory the funds reserved from earnings by the depreciation charges are immediately made available to the company for use for all corporate purposes. The owners cease to have a right to a return upon the portion of the property which has been consumed, but this loss is made up to them through the concurrent reimbursement. The funds so obtained by the company through this process of reimbursement may be used, if it desires, for the purchase of new property upon which a right to a fair return at once accrues. But this new property merely fills the hole caused by the partial consumption which is represented by the depreciation reserve. *The sinking-fund method, on the other hand, is based upon the theory that the company is entitled to a fair return upon all property maintained in condition for proper service, regardless of the fact that a part of its service life has been consumed, and that the owners should receive no reimbursement for property consumption until the unit has finally been retired.* Funds reserved from earnings by the depreciation charges are, therefore, segregated and allowed to accumulate at interest pending such ultimate reimbursement. They can not be used indiscriminately for corporate purposes but must be used to produce definite and reasonably assured earnings.

"The difference in theory is well illustrated by the following passage from the brief filed in behalf of the Public Service Commission of Oregon, that commission being one of the advocates of the sinking-fund method: 'Manifestly, the straight-line method of calculating depreciation *cannot properly be used in conjunction with an undepreciated rate base, nor should the sinking-fund principle be followed where a depreciated rate base is considered.* In other words, the public cannot equitably be required to pay for capital as it is consumed, *i. e.*, on the stright-line basis, and at the same time be required to pay a return upon such

consumed capital, *i. e.*, on on undepreciated rate base. *Nor should a utility company be asked or required to forego its legitimate return upon the full undepreciated value of its property unless its capital is fully repaid as rapidly as it is consumed.'*

"Granting the premises upon which they are based, both theories are logically sound. *In our opinion the premises which underlie the straight-line method are, as we have indicated in an earlier part of this report, in accord with the principles which have been enunciated by the Supreme Court of the United States.* This method is also much simpler and easier to apply. Nor are the practical results of the two methods very different, a fact which we have also noted and explained in the earlier discussion. *It is essential to bear in mind, however, that there is an inseparable connection between the straight-line method and the principle that accrued depreciation represented by the depreciation reserve must be deducted in ascertaining the rate-base value. If any other principle should hereafter be adopted by the courts, a reconsideration of the entire question of depreciation accounting would at once become necessary.*

"(3) *We therefore find that annual depreciation charges shall be computed at such percentage rate of the ledger value of the unit of property in question that the service value, as hereinbefore defined, may be distributed under the straight-line method in equal annual charges to operating expenses during the estimated service life of the unit. Annual charges so computed shall be reduced to a monthly basis by dividing by 12.*" (Emphasis ours)

EXTRACT FROM DECISION OF INTERSTATE COMMERCE COMMISSION IN TELEPHONE AND RAILROAD DEPRECIATION CHARGES, 177 I. C. C. 351, AT PAGES 408, 409, 410, 412, 413.

"*Straight-line method.*—This is the simplest and the one most generally used. It has the approval of the telephone companies, and, if depreciation charges are to be required, of the railroads. Most of the State and municipal authorities who are represented in these proceedings favor it, but some of the State commissions prefer the sinking-fund method, and at least one State commission is known to favor what is called below the annuity method. Under the straight-line method the annual depreciation charge is ob-

tained by dividing the estimated service value by the number of years of estimated service life. Thus, with a service value of $1,000 and a service life of 10 years, the annual depreciation charge is $100.

"*Sinking-fund method.*—The principle underlying this method, which has many forms, is that the depreciation installments will in one way or another earn compound interest. The annual depreciation charges are so fixed, in other words, that these yearly installments plus the interest accumulations will equal service value at the expiration of service life. Under the form which this method ordinarily takes, these annual charges would be uniform. Thus, with a service value of $1,000, a service life of 10 years, and an assumed interest rate of 6 per cent compounded annually, an annual charge of $75.87 will produce the required $1,000 at the end of the 10-year period. * * *

"In considering the merits of these methods the factor of fair return must be taken into account. *As we conceive of the straight-line method, it necessarily involves the proposition that the property of the company is continually being consumed in service and that the owners should be reimbursed therefor concurrently with the consumption.* By consumption is meant loss in service capacity. The funds reserved from income through the depreciation charges provide the reimbursement. The owners cease, of course, to have a right to a return upon that portion of the property which has been consumed, but the loss is made up to them by the depreciation charges, if the latter prove adequate. The funds so obtained through this process of reimbursement may be used, if the company desires, for the acquisition of new property upon which a right to a fair return at once accrues. But this new property merely fills the hole caused by the partial consumption which is reflected by the depreciation reserve. For the reasons which have already been stated there may be some actual difference between the credit balance in the depreciation reserve and the amount of accrued depreciation found upon examination, at any particular time, to exist in the property. But the intent is that, apart from variations which may result from the use of a different base or from the fact that depreciation accounting has not been employed from the beginning, the reserve shall reflect the actual depreciation.

"As we conceive of the sinking-fund method, it necessarily involves the proposition that the owners are not to be reimbursed for property consumed in service until the time when consumption becomes complete and the property is actually retired. In the meantime the funds reserved from income through the depreciation charges are allowed to accumulate at compound interest pending such ultimate reimbursement. They can be invested for this purpose in interest-bearing securities or in the company's own property. *A corollary of the theory seems to be that in determining the value of the property upon which the company is entitled to a fair return no deduction should be made for accruing depreciation which is not as yet complete.* * * *

"It will be noted that the sinking-fund method and the annuity method produce exactly the same result, when consideration is given to the total burden upon the public, consisting of fair return and depreciation charge combined. On the other hand, the burden under the straight-line method is greater during the first half of the service life than under the other methods, and less during the last half. The sinking-fund and annuity methods are much the same in underlying principle, and it may be that from a scientific and theoretical standpoint the annuity method is the soundest of all. We can not speak with assurance on that point, because of the fact that this method was not presented at the hearings where it could be subjected to the tests of analysis and cross-examination.

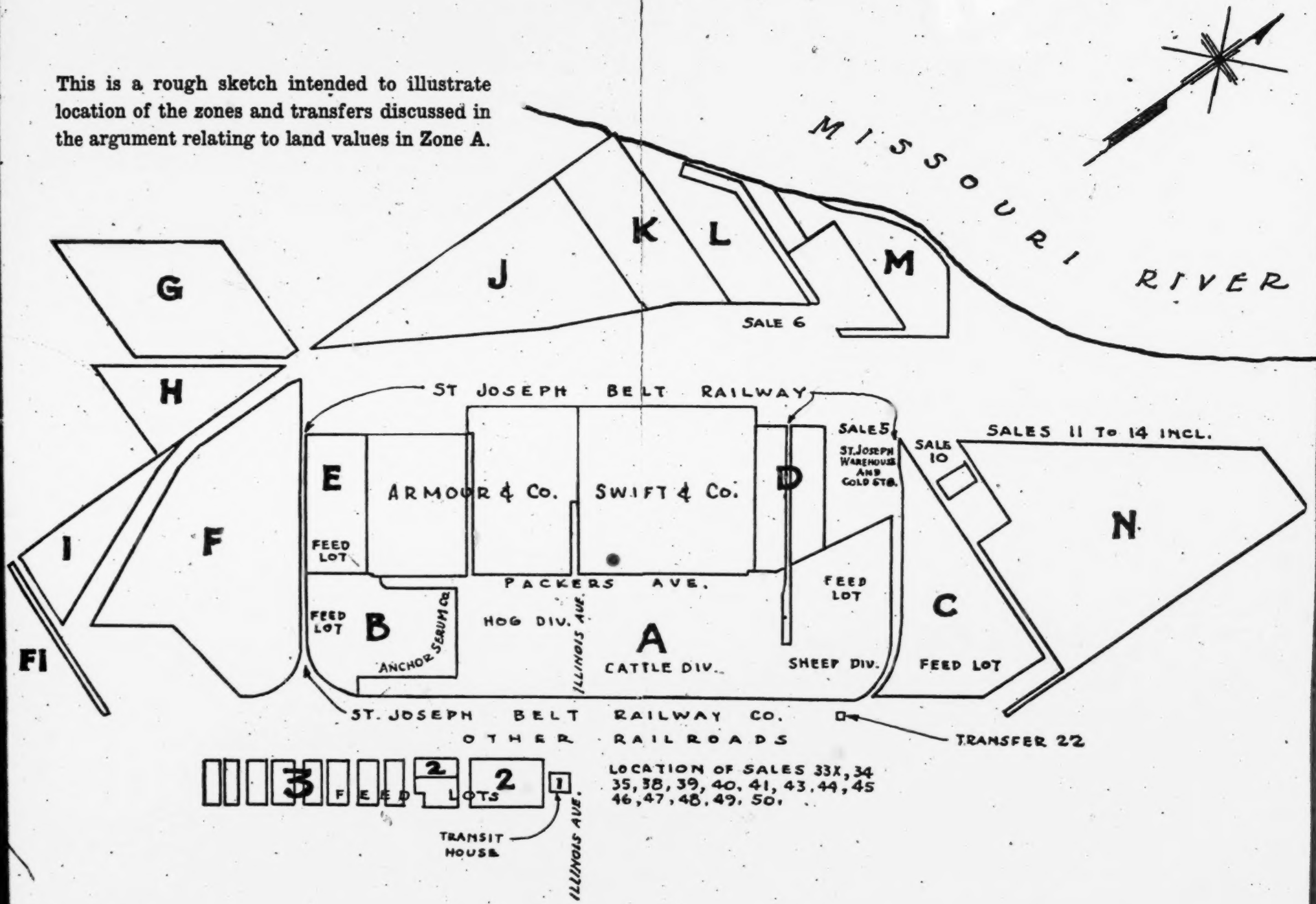
"It appears that in operation the sinking-fund method involves complexities and important practical difficulties. *It is easy, for purposes of illustration, to assume an interest rate, but in actual practice this rate must be governed by the facts. If the reservations from income are invested in the company's physical property, the rate can not be greater than is actually earned, and if earnings fluctuate widely, as they often do in the case of railroads generally, or if they are normally poor, as in the case of some railroads, the practical difficulties which the sinking-fund method may involve are evident.* These difficulties might perhaps be minimized, although not eliminated, by requiring the creation of a separate fund and its investment in approved securities. But there is little support for such a requirement, and it would result in depriving the company of the opportunity, often of great advantage, of using these moneys in building up its physical property. If the latter course were

followed and the operations of the company were very profitable, it might perhaps be permissible to use an interest rate lower than is actually earned; but certainly under such circumstances the rate ought not to be less than the percentage of a fair return, and that percentage may vary from time to time with changing conditions. Of course the results of the sinking-fund method will differ materially dependent upon the particular rate of interest which is used, and no one has suggested a means of combining it with a fluctuating rate of interest. • • •

"The straight-line method has the merit of simplicity and ease of practical application, and that is no doubt why it has so generally been used. Moreover, as applied to the business of a railroad or telephone company of normal size, having a great variety of property installed at many different dates, the results, provided the plan is followed to its logical conclusion, are not widely different from those attained by other methods. It must be conceded that it is likely, in general, to result in a combined depreciation charge and fair return somewhat greater than will be produced by other methods, but at best depreciation accounting must necessarily be an approximation, and the slight error resulting from the use of the straight-line method is one which can be offset by resolving doubts in favor of longer rather than shorter service lives. We are disposed to abide by the finding in our prior report in favor of the straight-line method. *It is the method which has consistently been used in our valuation proceeding. On the record before us, indeed, we would hardly be justified in reaching any other conclusion.*

"This conclusion, it should also be said, is associated with the confidence we entertain that the courts, when the issues and facts are made entirely clear to them, will recognize the connection and inter-relation between the depreciation in accounting and in valuation which have been pointed out hereinbefore." (Emphasis ours)

This is a rough sketch intended to illustrate location of the zones and transfers discussed in the argument relating to land values in Zone A.



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IN THE

Supreme Court of the United States

OCTOBER TERM, 1935.

No. 497

ST. JOSEPH STOCK YARDS COMPANY,
Appellant,

vs.

UNITED STATES OF AMERICA AND SECRETARY OF AGRICULTURE,
Appellees.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF MISSOURI, ST. JOSEPH DIVISION.

OBJECTIONS AND EXCEPTIONS OF APPELLANT TO APPELLEES' BRIEF ON ACCOUNT OF NONCOMPLIANCE WITH RULE 27 (d).

WILLIAM N. STRACK,
ROSS DEAN RYNDER,
Attorneys for appellant.

February, 1936.

THE GUNTHORP-WARREN PRINTING COMPANY, 310 WEST JACKSON, CHICAGO

IN THE

Supreme Court of the United States

OCTOBER TERM, 1935.

ST. JOSEPH STOCK YARDS COMPANY,
Appellant,

vs.

UNITED STATES OF AMERICA AND SECRETARY OF AGRICULTURE,
Appellees.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF MISSOURI, ST. JOSEPH DIVISION.

OBJECTIONS AND EXCEPTIONS OF APPELLANT TO APPELLEES' BRIEF ON ACCOUNT OF NONCOMPLIANCE WITH RULE 27 (d).

May it please the Court:

Appellant respectfully requests permission to submit the objections and exceptions hereinafter stated to the brief on behalf of the United States and the Secretary of Agriculture, because of the failure of said brief, in numerous instances, to comply with the provisions of rule 27 (d) of the rules of this Court. That is to say, said exceptions and objections are taken because, with respect to numerous factual statements in appellees' brief, there is either a failure to refer to supporting evidence in the record before this Court or the evidence in the record does not support the factual statement made in the brief.

In view of the practice before this Court under which reply briefs are not permitted, and in view of the fact that the numerous objections and exceptions here stated could not be presented within the time allowed for oral argument, appellant respectfully requests that the objections and exceptions stated be accepted and be considered by this Court in the disposition of this case, if such procedure is deemed appropriate by this Court under the circumstances.

In the following statement of said objections and exceptions, the number first stated in each objection refers to the page of the Government brief. Following is either a quotation of the factual statement or, where that would be too long, a reference to the paragraph of the brief. Following this, the averment of appellant either that the factual statement gives no reference to the record or that the reference there given does not support the statement so made.

Summary of Objections and Exceptions to Appellees' Brief for Noncompliance with Rule 27 (d).

Govt. brief—p. 17:

"The Transit House is an old hotel built at a time when there was not convenient access for appellant's patrons to the business section of St. Joseph. It is operated by a lessee at a rental less than adequate to pay taxes, insurance, and upkeep, and for years it has been a losing business proposition."

No reference to record.

Govt. brief—p. 18:

"In using reproduction cost, without giving weight to other factors such as original cost, the Secretary was *per se* liberal."

No reference to record.

No evidence in record as to original cost.

Govt. Brief—p. 19:

"The Secretary's valuation includes a substantial

amount for going concern value, which is inextricably interwoven with other values that were made on the basis of a plant in successful operation. Also, the liberality of the Secretary in using reproduction cost as the measure of structural value without giving consideration to other factors, such as original cost, is obvious in the case of a plant erected in the 1890's."

No reference to record.

No supporting evidence in record.

Govt. brief—p. 20:

"Appellant's property has reached a normal service condition and the history of its repair and depreciation accounts is a fair criterion of future needs. This history shows a policy of maintenance and replacement of worn-out parts out of the repair account over a period of many years."

No reference to record.

No supporting evidence in record.

Govt. brief—p. 21:

"* * * leaving capital stock outstanding of $1,875,000."

No reference to record.

Government exhibit 121-A, p. 381, shows present stock issue is no par stock.

Govt. brief—p. 22:

"These resales are largely made by traders in the traders' division, and it is proper that they should pay a charge, otherwise the cost of carrying the traders' division is borne by the general rate payers who do not use it."

No reference to record.

Govt. brief—p. 23:

"Hence, the prescribed maximum rates for the feedlots are somewhat higher than the existing rates for these facilities, and it is estimated that the prescribed maximum rates are high enough to permit the feedlots themselves to pay a fair return on their own fair value."

No reference to record or Secretary's decision.

Govt. brief—p. 25:

"In addition to cost of handling the different types

of business, the Secretary had to consider the value of the service, and this factor was duly weighed."

No reference to record or Secretary's decision.

Govt. brief—p. 31:

"While it had this original purpose, it is not used exclusively by employees or patrons of the stockyards."

No reference to record.

Unsupported by record.

Govt. brief—p. 32:

"• • • even though their yards are located some distance from the business section of the city (R. 209)."

Not supported by record reference given.

Govt. brief—p. 33:

"• • • (many, if not most, of whom do not personally accompany their livestock to market, and very few of whom use the Transit House) • • •."

No reference to record.

Unsupported by record.

Govt. brief—p. 51:

"Spratt obtained his value of the Belt land by comparing it with appellant's adjoining land, but in doing so he capitalized at 6% the income derived by appellant at its then prevailing rates."

No reference to record.

Record does not support statement.

Govt. brief—pp. 51-52:

"So up to this point it is obvious that the whole value of the stockyards land and of the right-of-way had been calculated by Spratt upon a capitalization of the stockyard company's earnings under the then existing rates—obviously a fallacious method when rates themselves are fixed by regulatory authority."

No reference to record.

Unsupported by record.

Govt. brief—p. 52:

"But when Spratt, in 1932, came to make a reappraisal of Zone A he relied upon the consideration stated in the mere paper transaction between appellant and its subsidiary, rather than upon the later sale to outside parties."

No reference to record.

Unsupported by record.

Govt. brief—p. 52:

"In this proceeding Spratt and others testified that the total value of the Belt property for rate-making purposes in the year 1928 was $2,500,342 (Gov. Ex. 135, p. 158). In reaching this valuation he had included the land at 30c per square foot (Gov. Ex. 135, p. 25)."

Reference to record does not support statement that Spratt testified to value of $2,500,342.

Govt. brief—p. 53:

"There is nothing in the record to indicate, and it is not to be presumed, that this discrepancy between the appraised value and the sale value applied in any greater or less degree to the land than to the other elements of the property."

No record reference shown.

Not supported by evidence.

Govt. brief—p. 58:

"• • • at a time when labor and materials were much cheaper than now, it is obvious that an extremely liberal policy in respect to the determination of fair value was pursued towards appellant."

No reference to record.

No evidence in record to support statement.

Govt. brief—p. 61:

"That Henrici used the personal inspection method prior to the first hearing in 1929 is clearly established by the evidence (R. 214)."

Not supported by reference given.

Govt. brief—p. 63:

"Although the Government offered these men as witnesses • • •"

Not supported by record.

Govt. brief—p. 66:

"Inasmuch as Henrici had carefully inspected appellant's property prior to the first hearing and had given his independent judgment upon its condition • • •"

No reference to record.

Not supported by record.

Govt. brief—p. 68:

"• • • the Secretary adopted valuations of the

structural properties as a whole which were based upon the fact of their successful operation * * *."

No reference to record.

Not supported by record.

Govt. brief—p. 88:

"Indeed, the valuation adopted is the value of a plant in successful operation * * *."

No reference to record.

Contrary to record.

Govt. brief—p. 91:

"It is clear that Henrici regarded his valuation as embodying the element of going concern value."

No reference to record.

Not supported by record.

Govt. brief—p. 91:

"Thus in ascertaining value the Secretary has adopted a method which allows a substantial increment over and above actual cost."

No reference to record.

No evidence as to actual cost in record.

Govt. brief—p. 96:

"For example, the roof of the hog yards was replaced at a cost of $4,445.93, and the roof of the sheep shed was replaced at a cost of $3,232.43 (Gov. Ex. 121-A, pp. 254, 4)."

Facts stated not supported by exhibit cited.

Govt. brief—p. 96:

"A study of the company's annual expenditures for repairs and maintenance discloses that they include many replacements."

No reference to record.

Not supported by record.

Govt. brief—p. 97:

"The Secretary's estimate of the amount annually needed for repairs and replacements was based first of all upon a study of the actual amounts expended over a long period of years by appellant and charged to the repair account. The figures are as follows:

YEAR	TOTAL	YEAR	TOTAL
1918	$40,484.37	1927	$39,000.48
1919	72,131.89	1928	45,679.60
1920	52,820.69	1929	43,516.51
1921	29,172.07	1930	29,500.12
1922	38,560.57	1931	24,905.34
1923	48,350.88	1932	19,793.79
1924	47,072.47		
1925	42,391.99	Total	629,066.81
1926	55,686.04	Yearly Average	41,937.78

No reference to record.
Unable to find figures before 1923.

Govt. brief—p. 97:

"There are also included in these repairs certain items of expense for replacements, such as replacement of the roof on the hog yards and the sheep shed previously discussed."

No reference to record.
Not supported by record.

Govt. brief—p. 98:

"* * * although deductions for retirements shown on the books do not in all cases represent actual loss because they represent gross and not net retirements. Some of the properties retired were sold or traded for new and similar assets, so that the net retirements would not be as great as is indicated."

No reference to record.
Not supported by record.

Govt. brief—p. 103:

"The property in the pen areas is kept in proper operating condition by ordinary repairs and piecemeal replacements. The reproduction new cost of this part of the property is about one-half of the reproduction cost of the entire property—or approximately $1,500,000."

No reference to record.
Not supported by record.

Govt. brief—p. 103:

"This amount includes retirements for fire losses which were covered by insurance (R. 453)."

Reference to record does not support statement losses were covered by insurance.

Govt. brief—p. 106:

Line in table shows dividend of $187,500 for 1932.

Government ex. 121-A, p. 10, shows dividend 1932 $112,000, or $3.00 per share.

Govt. brief—pp. 114-115:

"The record in the instant case clearly demonstrates that appellant's property has reached a normal operating condition—a condition in which the expense required for repairs and replacements has for some years been, and may in the future be expected to be, fairly static."

No reference to record.

Not supported by record.

Govt. brief—p. 115:

"The stockyard was built sometime during the 1890's and has been rendering continuous service since that time (R. 626)."

Reference to record shows only part of stockyards built during the 1890's.

Govt. brief—p. 116:

"A consulting engineer who testified for appellant at the second hearing said that appellant's property had 'about reached the turn-over stage' and that this applied to the 'stockyards' buildings, and improvements, which include the pen areas' (R. 723)."

Incorrect summary of statement made by witness at page referred to in record.

Govt. brief—p. 121:

"* * * it appears from appellant's books that this charge was not always imposed (R. 569)."

Not supported by reference given to record or otherwise.

Govt. brief—pp. 121-122:

"* * * was unreasonable and constituted unjust discrimination (R. 128)."

Statement as to unjust discrimination not supported by reference given, which related only to feed lot yardage.

Govt. brief—p. 137:

"Lack of sufficient return from the operation of the

feedlots was reflected in a reduced net income for appellant, with the resulting need for higher rates for other services."

No reference to record.
No evidence in record.

Govt. brief—p. 137:

"* * * an analysis was made to determine the value upon which the feedlots should yield a fair return."

No reference to record or decision of Secretary.
No evidence in record of such analysis.

Govt. brief—p. 137:

"Relating the square foot area of the feedlots in each zone to the square foot land value thereof, it is found that the value of the land occupied by the feedlots is $211,660."

No reference to record and no such finding by Secretary.

Govt. brief—p. 138:

"* * * making the total cost of reproduction new less depreciation of structures, plus the value of the land used for these facilities, $369,192."

No reference to record and no such finding by Secretary.

Govt. brief—p. 138:

"The taxes and insurance properly allocable to the feedlot lands and structures were about $6,336 (Gov. Exs. 121A, 121B, 121C)."

Statement not supported by exhibits cited.

Govt. brief—p. 138:

"Many of these structures are substantial in character and a large portion of the land is located within the limits of the city of St. Joseph and must, therefore, carry a higher tax rate than lands located outside the limits. The details upon which the segregation of such taxes and insurance were made will be found on pages 348-375 of Government Exhibit 121A."

Part of statement contains no reference to record.
Last sentence not supported by exhibit cited.

Govt. brief—p. 160:

"As a matter of fact, during the five-year period, appellant actually expended for repairs only $156,096, or $36,404 less than the amount allowed for that purpose by the Secretary."

No reference to record.

Contrary to table, p. 97 Gov't brief.

Govt. brief—p. 161:

"Appellant annually received in normal course recurring refunds on casualty insurance, which for the five-year period amounted to $31,816 (Gov. Ex. 121A, p. 7, line 8), and which appellant has not included in its calculation either as income or as a decrease in expense."

Statement not supported by reference to exhibit.

Govt. brief—p. 161:

"Based on appellant's experience for the years 1931-1932 there would have been an increase in appellant's revenue for the five-year period of $108,428 if appellant had applied the maximum rates for resales and reweighs permitted by the Secretary's order to all the business permitted by that order (Gov. Exs. 121A, p. 60; 121B, p. 7; 121C, p. 14; 122; 122A)."

Statement not supported by references given.

Govt. brief—p. 176:

"The Secretary properly recognized that in addition to the cost of rendering services, the value of the services should be considered."

No supporting reference to record or Secretary's decision.

Not supported by record or decision.

Respectfully submitted,

WILLIAM N. STRACK,
ROSS DEAN RYNDER,
Attorneys for Appellant.

February, 1936.

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No. 497

In the Supreme Court of the United States

OCTOBER TERM, 1935

ST. JOSEPH STOCK YARDS COMPANY, APPELLANT

v.

THE UNITED STATES OF AMERICA AND THE SECRETARY OF AGRICULTURE

ON APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF MISSOURI

BRIEF FOR THE UNITED STATES AND THE SECRETARY OF AGRICULTURE

INDEX

	Page
Opinion below	1
Jurisdiction	1
Questions presented	2
Statute involved	5
Statement	5
Summary of argument	13
Argument	28
I. The Secretary's determination of the fair value of appellant's property used and useful in the rendition of stockyard services should be sustained	28
A. The commercial hotel known as the "Transit House" is not used and useful in the rendition of stockyard services and the action of the Secretary in excluding the value of the Transit House from the rate base was lawful	28
B. The Secretary's finding that the value of the land in zone A is 16¢ per square foot should be sustained	34
Factors taken into account by the appraisers	36
Zelinski applied correct principles	42
Appellant's appraisers disregarded principles of land valuation established by this Court	46
Secretary's land value is liberal because of consideration given Belt transaction	50
The Secretary did not adopt stagnation value	54
The value of zone N supports the value given zone A	55
Conclusion as to land value	57
C. The Secretary's finding of the cost of reproduction new less depreciation of appellant's structural property should be sustained	57
D. The Secretary properly refused to make a separate additional allowance for going concern value over and above the amount therefor which was included in the other items going to make up the rate base	67

47221—36——1

Argument—Continued. Page

Appellant's evidence on going concern value is wholly speculative---- 69
Speculative evidence is not sufficient to require a separate additional allowance for going concern value---- 77
The decided cases clearly establish that no separate additional allowance for going concern value is required *per se*--- 82
The Secretary's total valuation amply allows for the element of going concern value-- ---- 88
II. The maximum rates prescribed by the order of the Secretary are sufficient to yield a fair return on the fair value of appellant's used and useful property---- 94
A. The amount allowed by the Secretary from gross revenues to cover repairs and a reserve for depreciation is more than sufficient for appellant's needs---- 94
The actual depreciation observed by all the engineers discloses the exorbitance of the amount appellant has carried in the depreciation reserve---- 100
Appellant's experience demonstrates the adequacy of the Secretary's allowance-- 103
The cases support the Government's position on depreciation reserve---- 107
B. The maximum rates and charges prescribed by the Secretary on livestock resold or reweighed for purpose of sale are based upon correct estimates of the volume of livestock subject to such rates and charges, and the resulting estimate of the yield from such rates and charges is not excessive---- 120
C. The maximum rates and charges prescribed for feedlot yardage are lawful and the Secretary's estimate of the return which will be yielded by such charges is not excessive---- 133
D. The rates and charges prescribed by the order of the Secretary are more than sufficient to produce a fair and nonconfiscatory return on the constitutional fair value of appellant's property as found by the Secretary---- 147
1. The application of the prescribed rates to the volume of business which the Secretary found could reasonably be anticipated each year produces more than a fair return upon the fair value of appellant's property as found by the Secretary---- 148

Argument—Continued.

Page

2. The application of the prescribed rates to the business of each year of the five-year period 1927–1931, inclusive, would have produced far more than a fair return upon the fair value of appellant's property 159

3. It is improper to take the single exceptional depression year 1932 as a basis for estimating the return from the maximum rates prescribed by the Secretary; but the application of those rates even to the business of that year would have produced a nonconfiscatory return 164

(a) As a matter of law, it is improper to take a single exceptional year as a basis for estimating the return from rates 164

(b) Even in the exceptional depression year, 1932, the rates prescribed by the Secretary would have yielded, if in effect, a nonconfiscatory return on the fair value of the property 167

III. Miscellaneous questions 171

A. The prescribed maximum rates and charges are adequately supported by the findings, including the finding that the existing rates and charges are unreasonable and unjustly discriminatory 171

B. The various prescribed maximum rates and charges are fair and reasonable in their relation to each other, and the specific reductions prescribed by the Secretary are fair and reasonable 175

C. The findings of the Secretary which were the basis of his earlier order entered in 1931 were not *res judicata*, and they were not binding upon the Secretary in prescribing maximum reasonable rates after the second hearing in 1933 180

D. The Secretary properly denied the petition for reopening and further hearing presented to him in February 1934 after the second hearing and prior to the making of the order herein complained of 191

Argument—Continued. Page

E. The position taken by the District Court with respect to the scope of judicial review is not reversible error 199

Conclusion 205

Appendix 206

CITATIONS

Cases:

Acker v. *United States*, 12 F. Supp. 766 198

American Commission Co. v. *United States*, 11 F. Supp. 965 198

Arizona Grocery Co. v. *Atchison, Topeka & Santa Fe Ry. Co.*, 284 U. S. 370 190

Atchison, Topeka & Santa Fe Ry. Co. v. *United States*, 284 U. S. 248 ..... 7, 26, 184, 188, 196

Bluefield Water Works & Improvement Co. v. *Public Service Commission of West Virginia*, 262 U. S. 679 28

Cedar Rapids Gas Light Co. v. *Cedar Rapids*, 223 U. S. 655 82

Clark's Ferry Bridge Co. v. *Public Service Commission of Pennsylvania*, 291 U. S. 227 ..... 18, 45, 94, 100, 187, 188

Columbus Gas & Fuel Co. v. *Public Utilities Commission of Ohio*, 292 U. S. 398 ..... 20, 81, 87

Dayton Power & Light Co. v. *Public Utilities Commission of Ohio*, 292 U. S. 290 ..... 20, 57, 86, 167, 204

Denver Union Stockyard Co. v. *United States*, 57 F. (2d) 735 ..... 65, 76, 108, 124, 165

Des Moines Gas Co. v. *Des Moines*, 238 U. S. 153 ..... 67, 82, 146

Galveston Electric Co. v. *Galveston*, 258 U. S. 388 ..... 20, 77

Georgia Railway & Power Co. v. *Railroad Commission of the State of Georgia*, 262 U. S. 625 80

Houston v. *Southwestern Bell Telephone Co.*, 259 U. S. 318 28

Illinois Central R. R. Co. v. *Interstate Commerce Commission*, 206 U. S. 441 ..... 199, 202

Interstate Commerce Commission v. *Louisville & Nashville R. R. Co.*, 227 U. S. 88 193

Interstate Commerce Commission v. *Union Pacific R. R. Co.*, 222 U. S. 541 ..... 190, 199

Knoxville v. *Knoxville Water Co.*, 212 U. S. 1 165

Lincoln Gas & Electric Light Co. v. *Lincoln*, 250 U. S. 256 204

Lindheimer v. *Illinois Bell Telephone Co.*, 292 U. S. 151 ..... 21, 95, 108, 118, 166, 204

Los Angeles Gas & Electric Corp. v. *Railroad Commission of California*, 289 U. S. 287 ..... 20, 28, 67, 79, 81, 84, 113, 201, 203

Minnesota Rate Cases, 230 U. S. 352 ..... 18, 28, 43, 50

Morgan v. *United States*, 8 F. Supp. 766 198

Northern Pacific Railway Co. v. *North Dakota*, 236 U. S. 585 140

Prentis v. *Atlantic Coast Line*, 211 U. S. 210 200

Radice v. *New York*, 264 U. S. 292 200

Cases—Continued.

	Page
St. Joseph Belt Railway, 133 I. C. C. 523	75
St. Joseph Stockyards Co. v. *United States*, 58 F. (2d) 290	7, 26, 181, 198
San Diego Land & Town Co. v. *National City*, 174 U. S. 739	28
Schechter Corp. v. *United States*, 295 U. S. 495	194
Skinner & Eddy Corp. v. *United States*, 249 U. S. 557	144
Smith v. *Illinois Bell Telephone Co.*, 282 U. S. 133	95
Tagg Bros. & Moorhead v. *United States*, 29 F. (2d) 750	146
Tagg Bros. & Moorhead v. *United States*, 280 U. S. 420	22, 26, 125, 143, 186, 200
Texas & P. R. Co. v. *United States*, 289 U. S. 627	144
Union Stock Yards Co. of Omaha v. *United States*, 9 F. Supp. 864	66, 109, 124, 176, 198
United States v. *Northern Pacific R. R. Co.*, 288 U. S. 490	27, 197
Virginian Railway Co. v. *United States*, 272 U. S. 658	190
West v. *Chesapeake & Potomac Telephone Co.*, 295 U. S. 662	202
Willcox v. *Consolidated Gas Co.*, 212 U. S. 19	28

Statutes:

Packers and Stockyards Act (1921), c. 64, 42 Stat. 159, 168 (U. S. C. Title 7, Sec. 201 *et seq.*)	206

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OPINION BELOW

The opinion of the District Court of the United States for the Western District of Missouri (R. 910) is reported in 11 F. Supp. 322.

JURISDICTION

The decree of the District Court was entered on May 1, 1935 (R. 141). Petition for appeal was filed May 24, 1935 (R. 147), and was allowed the same day (R. 163).

Jurisdiction of this Court rests upon Section 316 of the Packers and Stockyards Act, 1921, c. 64, 42 Stat. 159, 168 (U. S. C. Title 7, Sec. 217), making applicable to suits for injunction against orders of the Secretary of Agriculture the procedure provided in the Act of October 22, 1913, c. 32, 38 Stat. 208, 220 (U. S. C. Title 28, Sec. 47), with respect to suits for injunction against orders of the Interstate Commerce Commission. The provisions setting forth this procedure are incorporated in Subsection 5, Section 238 of the Judicial Code, as amended by the Act of February 13, 1925, c. 229, 43 Stat. 936, 938 (U. S. C. Title 28, Sec. 345).

QUESTIONS PRESENTED

I. QUESTIONS GOING TO THE SECRETARY'S DETERMINATION OF THE CONSTITUTIONAL FAIR VALUE OF APPELLANT'S PROPERTY USED AND USEFUL IN THE RENDITION OF STOCKYARD SERVICES

A. Whether the commercial hotel known as the "Transit House", which is owned by appellant and operated by a lessee, and the land on which it is located, are used and useful in the rendition of stockyard services, and whether the action of the Secretary in excluding the value of such property from the rate base was lawful (Appellant's Brief, Point XI, p. 104).

B. Whether the Secretary's finding that the value of the land in Zone A is 16¢ per square foot should be sustained (Appellant's Brief, Point XV, p. 159).

C. Whether the Secretary's finding of the cost of reproduction new less depreciation of appellant's structural property should be sustained (Appellant's Brief, Point XIII, p. 130).

D. Whether a separate additional allowance for going concern value should have been made by the Secretary over and above the amount therefor which was included in the other items going to make up the rate base (Appellant's Brief, Point XII, p. 109).

II. Questions Going to Whether the Rates Fixed by the Secretary are Sufficient to Yield a Fair Return on the Fair Value of the Used and Useful Property

A. Depreciation reserve—whether in estimating the net return to the company from the rates prescribed, the Secretary has allowed a sufficient amount from gross revenues to cover repairs and a reserve for depreciation (Appellant's Brief, Point XIV, p. 134).

B. Rates and charges prescribed by the Secretary on livestock resold or reweighed for purpose of sale—whether the Secretary's estimates of the volume of livestock subject to such rates and charges and his resulting estimate of the yield from such rates and charges are excessive (Appellant's Brief, Point IX, p. 84).

C. Feedlot charges—whether the Secretary's estimate of the return which will be yielded by the maximum feedlot charges prescribed in his order

is excessive and whether the order prescribing such maximum charges is lawful (Appellant's Brief, Point X, p. 93).

D. Whether the various rates and charges prescribed in the Secretary's order are sufficient to produce a fair and non-confiscatory return on the constitutional fair value of appellant's property as found by the Secretary (Appellant's Brief, Points V, VII, and VIII, pp. 46, 69, and 74).

III. Miscellaneous Questions

A. Whether the rates and charges prescribed by the Secretary are adequately supported by the findings, and whether appellant's existing rates and charges were unreasonable (Appellant's Brief, Points III and IV, pp. 29, 39).

B. Whether the various maximum rates and charges prescribed by the Secretary are fair and reasonable in their relation to each other, in the sense that the specific reductions prescribed by the Secretary in particular existing rates and charges are fair and reasonable (Appellant's Brief, Point VI, p. 60).

C. Whether the findings of the Secretary, which were the basis of his earlier order entered in 1931 prescribing maximum rates, were *res judicata* and binding upon the Secretary in prescribing maximum reasonable rates after the second hearing in 1933 (Presented in several of appellant's points, notably Point V, pp. 47–50; Point XI, pp. 104–106;

Point XII, pp. 112–113; and Point XV, pp. 171–172).

D. Whether the Secretary properly denied the petition for reopening and further hearing presented to him in February 1934 after the second hearing and prior to the making of the order herein complained of (Appellant's Brief, Point XVI, p. 176).

E. Whether the position taken by the District Court in its opinion with respect to the scope of judicial review constitutes reversible error (Appellant's Brief, Point I, p. 10).

STATUTE INVOLVED

The relevant portions of the Packers and Stockyards Act (1921) are set forth in the Appendix (pp. 205–207, *infra*).

STATEMENT

Appellant is a stockyard owner and is engaged in the operation of a stockyard which renders stockyard services as defined in the Packers and Stockyards Act, 1921. Its stockyard is located on the outskirts of St. Joseph, Missouri, in a section sometimes known as South St. Joseph (R. 24).

On October 9, 1929, the Secretary of Agriculture issued an order of inquiry and notice of hearing with respect to the reasonableness and lawfulness of the rates and charges at appellant's stockyards (R. 182–183). Pursuant to the notice, a hearing before an examiner was held at St. Joseph, Mis-

souri, beginning December 2, 1929 (R. 183). Voluminous testimony was taken with respect to all the questions pertinent to the determination of fair and reasonable rates. Numerous exhibits, including land appraisals, reports of engineers as to structural value, etc., audits of accountants, studies of depreciation of appellant's structures, and the like, were put in evidence by the Government and by appellant. This hearing was concluded December 17, 1929. Oral argument was subsequently heard by the Secretary and appellant submitted a brief (Appendix to appellant's brief, p. 11).

On February 11, 1931 (while the matter was still pending before the Secretary), appellant filed with the Secretary a "petition for reopening", alleging that due to certain changed economic conditions recited therein affecting appellant's operations, the proceeding should be reopened for the taking of further testimony (The allegations of this petition are fully recited in 58 F. (2d) 290, 291).

On July 20, 1931, the Secretary of Agriculture entered an order containing detailed findings of fact and prescribing a schedule of maximum reasonable rates and charges for observance by appellant (Appendix to appellant's brief, pp. 10–63). In the same order, without giving any reasons therefor, the Secretary denied the petition for reopening.

Appellant then instituted in the District Court for the Western District of Missouri a suit to enjoin the enforcement of the Secretary's order. In

that suit appellant challenged the power of the Secretary to value its used and useful property for rate-making purposes, contended that the prescribed rates were unreasonable and confiscatory, urged that the Secretary had erroneously denied the petition for reopening, and sought to introduce evidence before the court with respect to the matters contained in the petition for reopening. *St. Joseph Stock Yards Company* v. *United States,* 58 F. (2d) 290, 293. The court, in addition to receiving the record of the proceedings before the Secretary, heard additional evidence offered by appellant with respect to the alleged confiscatory effect of the order.

Subsequent to the hearing before the District Court but before its decision, this Court decided the case of *Atchison, Topeka & Santa Fe Ry. Co.* v. *United States,* 284 U. S. 248, in which it was held that the Interstate Commerce Commission had not been justified in denying petitions for rehearing alleging changed economic conditions in a proceeding in which the record had been closed in September 1928, and petitions for rehearing had been presented in September 1930, and February 1931. This Court held in that case that the enforcement of the order of the Interstate Commerce Commission should be enjoined on account of the denial by the Commission of the petitions for rehearing.

On April 16, 1932, the District Court, upon the authority of the *Santa Fe* case, granted a permanent injunction against the enforcement of the Sec-

retary's order. The court upheld the Secretary's power to value appellant's property for rate-making purposes, but expressly declined to pass upon the adequacy of the evidence taken before the Secretary to support the prescribed rates, or the question of whether upon the record made before the Secretary such rates would have been confiscatory. It is clear from the opinion of the court that the sole ground for granting the injunction was the refusal of the Secretary to grant the petition for reopening in the light of the changed conditions alleged in the petition and supported by the testimony taken at the hearing before the court.

On July 19, 1932, the Secretary entered an order reopening the proceeding and giving notice of further hearing (R. 394–397). The order reopening the proceeding, after summarizing the facts with respect to the previous hearing and the litigation, provided (R. 395–396):

> In view of the above mentioned decisions, the Secretary of Agriculture is of opinion that it is his duty, under the law, to reopen this docket and hold a rehearing to the end that all parties may be given opportunity to present such evidence of changes, both general and particular, which have occurred since the year 1929 as may be material to the issues raised by the order of inquiry herein; and also the end that all parties may have opportunity to present such other evidence as may be material to said issues; and further to the end that a general inquiry may be

had into the reasonableness and lawfulness of each and every rate and charge, and each and every rule and regulation affecting any rate or charge stated in any and all tariffs or schedules of rates and charges filed by respondent and now in effect for stockyard services rendered by it at the St. Joseph Stockyards, South St. Joseph, Missouri, wherefore.

It is ordered that the aforesaid order of the Acting Secretary of Agriculture entered in this docket on July 20, 1931, be and the same hereby is vacated and set aside; and that this docket be and the same hereby is reopened.

Pursuant to the above order and notice, a further hearing was held before an examiner at St. Joseph, Missouri, beginning January 10, 1933 (R. 397). This hearing was concluded February 16, 1933 (R. 26). A great deal of testimony was again taken with respect to matters pertinent to the determination of fair and reasonable rates, and many exhibits were again put in evidence by the Government and by appellant.

On February 2, 1934, while the matter was under consideration by the Secretary, appellant again filed a petition for reopening and further hearing, alleging certain facts (relating to changed economic conditions) which were submitted as grounds for reopening the case (R. 15–19). These allegations were that the Agricultural Adjustment Act would in the future cause reductions in the

amount of livestock received at appellant's stockyards (R. 16–17); that the enactment of the National Industrial Recovery Act increased appellant's costs (R. 17–18); that the action of the Federal Government in going off the gold standard and empowering the President to reduce the gold content of the dollar would necessarily increase commodity prices, wages, and property values, and that appellant's property had "already increased 25% since August 1, 1932, the date of the appraisals used in this proceeding, due to increase in material and labor prices and construction costs" (R. 18); and that since the close of the hearing there had been certain stated reductions in appellant's net operating income (R. 19).

On May 4, 1934, the Secretary of Agriculture entered his "Findings, Conclusion and Order" (R. 24–131) containing detailed findings with respect to pertinent rate-making factors, including a finding that the existing rates were unreasonable and unjustly discriminatory (R. 128), and prescribing a schedule of maximum reasonable rates and charges for the future (R. 128–130). The findings also included a detailed discussion and findings of fact with respect to the petition for reopening and further hearing (R. 26–29), and the order denied the petition (R. 131).

Subsequently, on May 15, 1934, appellant commenced this suit by the filing of a petition in the District Court to enjoin the enforcement of the order (R. 1–23). The petition contained the cus-

tomary prayer for convoking a three-judge court, and asked for a temporary injunction and a permanent injunction against the enforcement of the order (R. 23).

The Government did not oppose the granting of a temporary injunction and, at a hearing held June 9, 1934, a temporary injunction was granted upon condition that appellant furnish an adequate bond to assure refunds to the shippers of livestock if the order should finally be upheld.*

Although the petition filed in the District Court contained numerous allegations concerning the claim of confiscation, including allegations as to the net operating income for the year 1933, and other matters *de hors* the record before the Secretary (R. 20–22), no effort was made to introduce any additional evidence before the court, and the matter was submitted to the court at the final hearing solely upon the record made before the Secretary.

On May 1, 1935, the District Court rendered a memorandum opinion and findings of fact (R. 910–938) upholding the order of the Secretary and rejecting all of appellant's contentions (except those attacking the exclusion from the rate base of the value of several minor items of property found to be not used and useful, but the value of these items was so small that they were immaterial). The court made many specific find-

* The proceedings relating to the temporary injunction, and the order providing for it, were not included in the printed record on appeal.

ings of fact, and in addition adopted (with certain minor exceptions) the Secretary's findings of fact as its own (R. 938).

At the hearing before the District Court there was introduced in evidence an abstract of the record of the 1929 hearing before the Secretary, an abstract of the record of the 1933 hearing before the Secretary, and voluminous exhibits which had been introduced at the 1933 hearing (R. 169). After the present appeal had been allowed, both parties entered into a stipulation substituting a condensed narrative of the transcript of the evidence and proceedings in both hearings for the original transcript thereof, and further providing for the printing of only certain portions of the condensed narrative (R. 168–182). It was also provided in the stipulation that some of the exhibits introduced in the District Court should be transmitted to this Court as original exhibits and that they should not be printed. Those exhibits have been certified to this Court, pursuant to Rule 10, paragraph 4, and it has been stipulated that they may be referred to by both parties (R. 179–182).

The pertinent facts in this case are stated in the findings (R. 30–127, 910–938). Inasmuch as most of the issues on this appeal require discussion of the facts in connection with the argument, it seems that it would unnecessarily prolong this brief to undertake now to make a further separate factual statement. Accordingly, further recital of the facts will be left to the portions of the brief devoted to argument.

SUMMARY OF ARGUMENT

This is the first case under the Packers and Stockyards Act, 1921, to present to this Court the ordinary issues of valuation and fair return in a stockyard rate controversy. Those issues are whether the valuation of appellant's property, upon which the Secretary of Agriculture has based the maximum rates prescribed in his order, is constitutionally sufficient; and whether those rates, in view of the volume of business to be anticipated and the deduction of proper charges from operating income will yield to appellant a constitutionally adequate return on the value of its property.

The Secretary found and employed as the basis of his order a value of $2,743,000 for appellant's property used and useful in the rendition of stockyard service. In arriving at this figure, he valued appellant's structural property at a reproduction cost new before depreciation of $2,637,186. In spite of the fact that many of these structures are more than thirty years old, the Secretary used reproduction cost, unmodified by any considerations of original or historical cost, as the basis of his valuation. Appellant apparently does not challenge the Secretary's finding of reproduction cost before depreciation but objects to the amount for accrued depreciation which the Secretary deducted, namely $597,570. Appellant contends that this deduction was excessive to the extent of $341,799. Appel-

lant's claim in this respect should be considered in the light of the fact that it carries on its books as accumulated depreciation reserve built up since 1915 a net amount of $1,771,063.64.

Appellant claims that the Secretary improperly excluded from the rate base as not used and useful a commercial hotel known as the "Transit House" and that the rate base should be increased by adding $120,143 as the value of this hotel. Appellant also claims that the value of that portion of its land known as "Zone A", found by the Secretary to be $480,635.68, or 16¢ a square foot, should be increased at least $275,164 on the basis of what amounts to testimony as to its special use value.

Appellant further claims that the rate base should be increased by a separate additional item for going concern value of approximately $273,300, or about 10% of the rate base, based upon testimony by one of appellant's engineers as to losses to be anticipated if the property were to start operation afresh until its present volume of business were reattached. The Secretary contends that full allowance for going concern value has been included in the valuation of the items going to make up the rate base and that therefore no separate additional allowance for going concern value is necessary.

Appellant thus claims that the rate base should be increased by $1,010,406 over and above the $2,743,000 found by the Secretary.

The Secretary estimates that under the new schedule of rates and charges prescribed in his

order, appellant's net income from operations available for a return upon its investment will be $195,564, or 7.13% on the valuation of appellant's property as found by him. This yield may be compared with appellant's actual net income of $276,651.95 in 1927; $339,267.11 in 1928; $314,127.39 in 1929; $279,029.72 in 1930; and $223,461.37 in 1931; $190,656.21 in 1932. These figures of appellant's actual net return constitute the following percentage return on the Secretary's valuation: 1927, 10.09%; 1928, 12.37%; 1929, 11.45%; 1930, 10.17%; 1931, 8.15%; 1932, 6.95%. It is significant to compare these percentages with the dividends actually paid by appellant during the years in question: 1927, 11%; 1928, 13%; 1929, 11%; 1930, 13% (plus an additional liquidating dividend of 41.67%); 1931, 12%; 1932, 10%.

Appellant claims that the Secretary's estimate that the rates fixed in his order will yield an annual return of $195,564 is excessive. This claim is based in part upon the contention that the Secretary's allowance for an annual deduction from operating expenses for repairs and depreciation reserve of $80,000 is insufficient and that in addition to an allowance of $38,500 for repairs there should have been an allowance of $100,000 for depreciation reserve alone. Between 1915, when appellant's depreciation reserve account was established, and 1932, appellant transferred to the depreciation reserve account an annual average of $104,859. As a result, at the end of 1932 appellant

had built up a depreciation reserve of $1,887,469, against which during the entire period, deductions for retirements had been made to the extent of only $116,405.86, leaving at the end of 1932 a net balance in the depreciation reserve of $1,771,063.64. In the light of this record it will be argued that the Secretary's allowance of $41,500 annually for depreciation reserve, in addition to the unchallenged item of $38,500 for repairs, is more than adequate.

The remainder of appellant's contentions as to the inadequacy of the Secretary's rates to yield a constitutionally fair return revolve about estimates as to the volume of business reasonably to be anticipated which will be developed in detail in the portions of the argument devoted to that question.

In view of the fact that the record fully sustains the Secretary's order on any theory of judicial review, the question of the scope of judicial review is not material in this case.

Other lesser questions have already been stated under "Questions Presented." A more detailed summary of the Government's position on all of these questions follows:

I. The Secretary's Determination of the Fair Value of Appellant's Property Used and Useful in the Rendition of Stockyard Services Should Be Sustained

A. The value of property which appellant may own but not use in the rendition of stockyard services (as defined in Section 301 (b) of the Packers and Stockyards Act, 1921) should not be included in the rate base. The Secretary, in determining

upon a proper rate base, excluded therefrom the value of various tracts of land owned by appellant, but on this appeal appellant only challenges the lawfulness of the exclusion of the value of the Transit House, a commercial hotel owned by appellant, and the land on which it is located. The Transit House is an old hotel built at a time when there was not convenient access for appellant's patrons to the business section of St. Joseph. It is operated by a lessee at a rental less than adequate to pay taxes, insurance, and upkeep, and for years it has been a losing business proposition. The general ratepayers who use the stockyard facilities should not be burdened by higher rates to support a losing commercial enterprise which the evidence clearly shows is very little patronized and is not necessary under present conditions as a service to shippers. While appellant may, within the limits of its charter power, engage in any enterprise it desires, losses from collateral enterprises should not be paid by the general ratepayers, when, as in the case of the Transit House, such enterprises are plainly not stockyard services.

B. The fair value of Zone A (appellant's land was divided into a number of zones by the appraisers and all were valued, but the Secretary's finding of the value of Zone A is the only finding of land value challenged on this appeal) is not more than $6,969.60 per acre or 16¢ per square foot—the value adopted by the Secretary for rate-making purposes. The evidence would have warranted a lower valuation, and in adopting

16¢ per square foot the Secretary was liberal. The appraisers upon whose testimony and appraisal reports appellant relies to support its contention that a higher value should have been reached employed methods that are erroneous under the decisions of this Court in the *Minnesota Rate Cases,* 230 U. S. 352, and *Clark's Ferry Bridge Company* v. *Public Service Commission of Pennsylvania,* 291 U. S. 227.

C. The Secretary took as the sole measure of structural value reproduction cost new less depreciation. In using reproduction cost, without giving weight to other factors such as original cost, the Secretary was *per se* liberal. The engineers for appellant and for the Government were in substantial agreement on the cost of reproduction new, the only issue between them being that of the estimate of accrued depreciation, or of the percent condition of the property. The Secretary found that the percent condition of the property was 76.04%, although appellant claimed that it was 89%. On the basis of appellant's claim, the amount of accrued depreciation was only $337,437, although appellant has a net accumulated balance in its depreciation reserve of $1,771,063.64. The disparity between the net accumulated balance in the reserve and the amount of accrued depreciation claimed on the physical structures is notable. Appellant's only attack, however, upon the Secretary's finding of percent condition is that it is not supported by legal evidence. At the first hearing the chief engineer who testified had personally in-

spected the structural property. At the second hearing, he testified to a present percent condition not materially different from the percent condition which he had earlier reported. His opinion at the second hearing was based upon an average of the percents recommended by five of his assistant engineers who had personally inspected the property. These five assistants were offered for cross-examination, but appellant did not ask to have them take the witness stand. Since the opportunity to cross-examine these assistants was given by the Government and declined by appellant, appellant has no ground for claiming that no legal evidence was offered at the second hearing on percent condition. Moreover, the question cannot even be raised with respect to the testimony at the first hearing, which also supports the Secretary's finding.

D. The Secretary's valuation includes a substantial amount for going concern value, which is inextricably interwoven with other values that were made on the basis of a plant in successful operation. Also, the liberality of the Secretary in using reproduction cost as the measure of structural value without giving consideration to other factors, such as original cost, is obvious in the case of a plant erected in the 1890's. Other instances of liberality, such as in the rate of return, clearly leave in the rate base an unlabeled margin adequate to cover the going concern element. No separate additional allowance was made for going concern value, and

none *per se* is required. *Los Angeles Gas & Electric Corp.* v. *Railroad Commission of California,* 289 U. S. 287; *Dayton Power & Light Co.* v. *Public Utilities Commission of Ohio,* 292 U. S. 290; *Columbus Gas & Fuel Co.* v. *Public Utilities Commission of Ohio,* 292 U. S. 398, and other cases. The only specific evidence of going concern value offered by appellant was that of a witness whose testimony was wholly speculative and theoretical and subject to even greater criticism than that directed by this Court at the past deficit method in *Galveston Electric Co.* v. *Galveston,* 258 U. S. 388.

II. The Maximum Rates Prescribed by the Order of the Secretary Are Sufficient to Yield a Fair Return on the Fair Value of Appellant's Used and Useful Property

A. The amount allowed by the Secretary from gross revenues to cover repairs and a reserve for depreciation is more than sufficient for appellant's needs. Appellant's property has reached a normal service condition and the history of its repair and depreciation accounts is a fair criterion of future needs. This history shows a policy of maintenance and replacement of worn-out parts out of the repair account over a period of many years. During this period a huge reserve for depreciation has accumulated and withdrawals from it for retirements have been negligible. Indeed, between 1915 and 1932 appellant charged on its books $1,887,469.50 to depreciation reserve and withdrew therefrom for re-

tirements only $116,405.86, leaving a net accumulated balance in this account on December 31, 1932, of $1,771,063.64. Through a capital stock dividend appellant, in 1923, increased its outstanding capital stock from $2,500,000 to $3,750,000, and then, in 1930, through a liquidating dividend, paid off half its capital stock, leaving capital stock outstanding of $1,875,000. During the depression years covered by the record, appellant paid annual dividends to its stockholders of 10 percent and 12 percent, respectively. The inference is inescapable that the depreciation reserve carried on the books is far in excess of depreciation needs, and that it has been used to support extraordinary financial returns to the investors. The Secretary's allowance is a very liberal one, more than ample to meet needs demonstrated by a study of appellant's depreciation history for eighteen years. The Secretary did not follow any theoretical method of ascertaining a fair allowance (although appellant's argument is largely an attack on the sinking fund method, which the Secretary did not use). The present case presents a very close parallel to the facts involved in *Lindheimer* v. *Illinois Bell Telephone Company*, 292 U. S. 151, and the holding of this Court in that case is squarely in point.

B. The schedule of maximum rates and charges prescribed by the Secretary includes a charge for livestock resold or reweighed for purpose of sale amounting to one-half the charge prescribed for livestock received by vehicle or on foot. This

charge (except as to calves) is exactly the same as appellant had previously been charging, but appellant's charge was limited by its published tariff to livestock resold in the commission division, whereas the prescribed rates permit it to be applied to resales regardless of the division of the stockyards in which they are made. These resales are largely made by traders in the traders' division, and it is proper that they should pay a charge, otherwise the cost of carrying the traders' division is borne by the general rate payers who do not use it. The Secretary's estimate of the volume to which such charge would apply is reasonable, and is amply supported by the evidence. A somewhat similar charge to be collected by market agencies was made in the order upheld in *Tagg Bros. & Moorhead* v. *United States,* 280 U. S. 420.

C. Appellant owns feedlots which are physically separate from the main stockyard area and in which livestock not ready for slaughter may be fed. These feedlots are used for periods ranging from 30 to 100 days per head. Appellant previously has imposed a separate charge for use of these feedlots which has been so low as to amount merely to a nominal per head charge—much lower than the general yardage charge for use of the principal facilities of the stockyard (although livestock using the latter is seldom yarded for more than a day or so). The Secretary found that the feedlots should bear a greater amount of their carrying cost, and

that it was unreasonable and discriminatory to require the general ratepayers to pay in higher rates for the maintenance of feedlots which they do not use. Hence, the prescribed maximum rates for the feedlots are somewhat higher than the existing rates for these facilities, and it is estimated that the prescribed maximum rates are high enough to permit the feedlots themselves to pay a fair return on their own fair value. This is eminently fair and reasonable. The Secretary's estimate of the volume of livestock that may reasonably be expected to use these facilities annually is amply supported by the evidence.

D. The rates and charges prescribed are more than sufficient to produce a fair return on the constitutional fair value of appellant's property. As applied to the fair value found by the Secretary, the rates prescribed will produce approximately 7.13% of such fair value. Not only can the prescribed rates be tested with reference to the volume of business used as a rate factor in the order, but they can also be tested with reference to actual receipts during a six-year period shown in the record, 1927–1932. This six-year period covered a wide range in business activity from that of extreme prosperity to that of extreme depression. It is a fair test period. As applied to the business of such period, the prescribed rates would have yielded an average net return of 9% of the fair value of appellant's property. If the exception-

ally abnormal year of 1932 is omitted from the test period, the prescribed rates would have yielded an average annual net return of 9.7% for the years 1927–31. Although as a matter of law rates should not be tested with reference to only a single year, especially when that year is shown to be abnormal, even in 1932 the prescribed rates would have yielded a rate of more than 5.6% on the fair value of appellant's property, notwithstanding the marked abnormal recession in business that year.

III. Miscellaneous Questions

A. The prescribed maximum rates and charges are adequately supported by the findings which include findings with respect to the services rendered and the rates charged therefor under the existing schedule; the used and useful character of appellant's property; the valuation of the used and useful land; the value of appellant's structures based on cost of reproduction new less depreciation; the amount necessary to be allowed for working capital; going concern value; fair value of the property as a whole; fair rate of return; reasonable net operating income; reasonable operating expenses; volume of business; reasonableness of existing rates; and concluding with a schedule of maximum reasonable rates. The order also contains an application of those rates to the volume of business shown by the record to be reasonable. These findings are legally sufficient to support the order.

B. The various prescribed maximum rates and charges are fair and reasonable in their relation to each other, and the specific reductions which the Secretary prescribed are fair and reasonable. The Secretary took into account certain losses of revenue incident to the trend in receipts from rail arrivals to truck arrivals, and accordingly in the prescribed rates allowed a differential in favor of arrivals by truck in order to offset this loss. This differential was gauged to offset approximately the loss of revenue incident to this shift and it is manifestly fair in view of what the record shows. While it is true that there is some percentage variation between the reduction in the yardage rates for handling different species of livestock, this fact in itself is immaterial. In addition to cost of handling the different types of business, the Secretary had to consider the value of the service, and this factor was duly weighed. The rates were prescribed with a view to producing a fair return on the fair value of appellant's property as a whole, and the accomplishment of this end did not require the allocation of general costs to every specific service rendered or function performed by appellant.

C. The findings of the Secretary which were made in 1931 and which were based upon evidence received at the 1929 hearing were not *res judicata* when the Secretary prescribed maximum reasonable rates in 1934 following the reception of additional evidence at a second hearing in 1933. This

would have been true had the order based on the findings made in 1931 been valid. *Tagg Bros. & Moorhead* v. *United States,* 280 U. S. 420, 445. *A fortiori* it is true when the order based upon the findings made in 1931 has been set aside by the District Court (*St. Joseph Stockyards Co.* v. *United States,* 58 F. (2d) 290), and has also expressly been vacated by the Secretary. The 1931 findings and order have been nullified and they have no standing whatever in this case, although the record of the first hearing is part of the record here. The District Court, in the suit involving the first order, expressly declined to pass upon the merits of the Secretary's finding, and decided the case solely on the finding of error by the Secretary in denying a petition for rehearing (presented in February 1931), basing such decision upon additional evidence presented to the court. The decision was made on the authority of *Atchison, Topeka & Santa Fe Ry. Co.* v. *United States,* 284 U. S. 248. The findings made in 1931 are irrelevant and immaterial in the present case.

D. A petition to the Secretary for reopening and further hearing, filed in February 1934, was properly denied. Its allegations related to (1) the enactment of the Agricultural Adjustment Act, (2) the enactment of the National Industrial Recovery Act, (3) the Government's monetary policies, and (4) certain alleged decreases in net income in 1933. Those allegations relating to the effect of new legislation and governmental policies were, at the time

they were presented, wholly speculative. The allegations with respect to 1933 net income did not present such radical changes as, if they had been proved, would have warranted a rehearing. To have granted this petition would needlessly have prolonged the proceeding and would have disenabled the Secretary effectively to function under the Act. The situation presented was comparable to that in *United States* v. *Northern Pacific R. R. Co.*, 288 U. S. 490. The petition for reopening and further hearing was properly denied.

E. The position taken by the District Court with respect to the scope of judicial review is not reversible error. The Secretary is a tribunal appointed by law and informed by experience to determine reasonable and nondiscriminatory stockyard rates and his findings, based upon evidence, are entitled to great weight. Constitutional rights are adequately protected, if the reviewing court examines the evidence and in the light of that examination does not find that "the evidence requires the conclusion that * * * the result is confiscation", *Los Angeles Gas & Electric Corp.* v. *Railroad Commission*, 289 U. S. 287. The issue in this case is not the reasoning of the lower court in reaching its conclusion that the prescribed rates are not confiscatory, but whether those rates are in fact confiscatory. So far as the validity of the order herein challenged is concerned, the scope of review below is not here in issue inasmuch as a clear preponderance of the evidence shows that the maximum rates

prescribed are fair, reasonable, nondiscriminatory, and not confiscatory.

ARGUMENT

I. The Secretary's Determination of the Fair Value of Appellant's Property Used and Useful in the Rendition of Stockyard Services Should be Sustained

A. The commercial hotel known as the "Transit House" is not used and useful in the rendition of stockyard services and the action of the Secretary in excluding the value of the Transit House from the rate base was lawful

(Appellant's Brief, Point XI, p. 104)

At the outset the question arises as to what property is employed in the public service which, in a case like the present, means what property is used and useful in the rendition of stockyard services. It is only the value of property that is thus used and useful that should be included in the rate base. Time and again this Court has reiterated that a business subject to rate regulation is entitled only to a fair return upon the fair value of its property at the time it is being used for the public service. *Minnesota Rate Cases*, 230 U. S. 352, 434; *San Diego Land and Town Co.* v. *National City*, 174 U. S. 739, 757; *Willcox* v. *Consolidated Gas Co.*, 212 U. S. 19, 41; *Bluefield Water Works & Improvement Co.* v. *Public Service Commission*, 262 U. S. 679, 690; *Houston* v. *Southwestern Bell Telephone Co.*, 259 U. S. 318, 324; *Los Angeles Gas and Electric Corp.* v. *Railroad Commission of California*, 289 U. S. 287, 310–311.

Indeed, appellant does not challenge this general proposition, nor does it contend that it is entitled to a fair return on the value of all of the property which it owns. At the time of the second hearing appellant owned 371.5 acres of land and conceded that approximately 182 acres thereof were not used and useful in the rendition of stockyard services (R. 47). At the hearing before the Secretary appellant claimed that approximately 189.5 acres of its land were used and useful (R. 47), but of this the Secretary found that only 101.248 acres were used and useful, and that approximately 88 acres were not so used and useful (R. 69).*

In the District Court appellant challenged the Secretary's exclusion from the rate base of the value of the 88 acres of land found by him to be not used and useful, and the structures thereon. The District Court considered in great detail appellant's contentions with respect to the various properties the value of which had been excluded by the Secretary, and concluded (with certain minor exceptions not material, and not affecting the final result) that the Secretary's determination as to the used and useful character of appellant's property was amply sustained by the evidence (R. 918–927). Although on the question of the law-

* The Secretary's findings on this point were made in square feet instead of acres, but his findings in square feet were the equivalent in acres of the amount shown above (43,560 square feet to an acre).

fulness of the Secretary's findings as to used and useful property, the District Court upheld the Secretary in every material respect, appellant has only assigned as error the court's holding with respect to one piece of property—the Transit House.*

The question presented in this aspect of the case is whether the Transit House is performing a stockyard service within the meaning of the Packers and Stockyards Act. Section 301 (b) of the Act defines stockyard services to mean "services or facilities furnished at a stockyard in connection with the receiving, buying, or selling on a commission basis or otherwise, marketing, feeding, watering, holding, delivery, shipment, weighing, or handling in commerce, of livestock." It is submitted that the maintenance of the Transit House is not the performance of such a service.

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* As to the Transit House, the District Court found as follows (R. 918–919):

"This tract is a piece of land having 15,805 square feet occupied by a hotel called the Transit House. This is a commercial hotel patronized principally by shippers to the yard and by drivers of trucks carrying live stock to or from the yards. The contention is that this property should be included in the rate-base value because it is a necessary convenience connected with the yards' business. While the yards are some distance from the hotel section of the city proper, there is no sufficient showing of any reason why other hotels and lodging houses could not be used by those having business with the stockyards. It would have to be shown very clearly that the business of the yards would be materially affected by the absence of a near-by hotel before it could be said that the maintenance of such was so related to the yards business as to make it proper to be included in the rate for yard services. There is no such showing here, and the exclusion thereof by the Secretary is sustained."

The Transit House is located on land owned by appellant and is leased to an independent operator and conducted as a regular commercial hotel (R. 408). It was constructed many years ago at a time when hotel facilities were not available in the vicinity of the stockyards and when there was no ready transportation to the city (R. 230, 234). At the time of the construction of the Transit House, there were difficulties connected with getting up town, but with better paving and automobiles those difficulties are not now so great for most of the patrons (R. 230, 272). It was built to accommodate patrons of the stockyards and was originally operated by appellant (R. 271). While it had this original purpose, it is not used exclusively by employees or patrons of the stockyards. Anyone who patronizes the Transit House pays the lessee who operates it the regular rates for the services rendered by the lessee as a hotel proprietor (R. 408).

While the presence of a hotel in the stockyards area has no doubt been a convenience to certain persons, it does not follow that this makes it a stockyard service. Indeed, the maintenance of other business institutions, such as stores, banks, theaters, barber shops, and recreational halls, in the neighborhood would no doubt be a convenience and perhaps, in the view of some, a necessity. But the need for these enterprises, if it exists sufficiently, would in normal course be fulfilled by other persons or institutions. If others did not respond sufficiently to fulfill this need, appellant, of course, could engage

in these other businesses (within the limitations of its charter power) to the extent that appellant found it worth while to do so. Appellant thus could own and operate (or own and lease) hotels, stores, and other like facilities to serve its employees and patrons. But the ownership or operation of these facilities naturally would constitute separate business enterprises conducted for profit and would not become stockyard services to be maintained at the expense of the ratepayers as a whole. There is no issue in this case of appellant's right to own or operate a commercial hotel. The question is merely whether the value of that hotel must be included in the rate base upon which rates payable by all of the patrons of the stockyards (whether they use the hotel or not) are predicated.

The maintenance of a commercial hotel has not customarily been considered to be a stockyard service, and few of the leading stockyards undertake to maintain hotels for their patrons even though their yards are located some distance from the business section of the city (R. 209).

At the time of the first hearing before the Secretary it appeared that the Transit House was leased for a rental of $1,200 per year under a contract whereby the books of the lessee were open to appellant's inspection, and whenever it appeared that the business transacted warranted an increase of rental, the rental might be raised (R. 271–272, 845). At the time of the second hearing the business had not justified an increase (R. 845). The president

of the Company stated at the second hearing that the income to the operator would not justify a rent increase, and that taxes and depreciation and other items had more than absorbed the $1,200 per year rent which appellant received (R. 845).

The Secretary found that the decadence of this property as income-producing property had resulted from the development of good roads, motor vehicles, and the street-car system, which connects the stockyards with the main business section of St. Joseph, as well as the change which has come about in the method of transporting livestock (R. 67–68).

The Transit House thus does not pay for itself and does not produce for appellant revenue enough to pay taxes, insurance, and upkeep, to say nothing of a return upon its value. If the value of the Transit House were to be included in the rate base, the general patrons of the stockyards would have to contribute, in higher rates, money sufficient to yield a fair return upon approximately $120,000, which appellant claims to be the value of this property. If the value of this property were to be included in the rate base, the effect would be to levy an annual charge upon the general shippers to the stockyards (many, if not most, of whom do not personally accompany their livestock to market, and very few of whom use the Transit House) to maintain a commercial hotel at non-compensatory rates for the special benefit of a few patrons of the market and such members of the general

public as care to avail themselves of the low-priced accommodations.

It is submitted that the Secretary's findings with respect to the Transit House were lawful and that the District Court's holding on this point was proper.

B. THE SECRETARY'S FINDING THAT THE VALUE OF THE LAND IN ZONE A IS 16¢ PER SQUARE FOOT SHOULD BE SUSTAINED

(Appellant's Brief, Point XV, p. 159)

The Secretary's findings of the value of appellant's used and useful land, for each of the several zones, are summarized in paragraph 121 of the order (R. 88). Although there were eight zones found to be used and useful, appellant challenges the Secretary's finding of the value of only one of them—Zone A—which, however, is by far the largest zone. The Secretary found that the 3,003,973 square feet of land in Zone A has a fair value of 16¢ per square foot, or a total value of $480,635.68 (R. 83–84). Appellant contends that the true value of the land in Zone A is at least $275,164 (or about nine cents per square foot) more than the fair value determined by the Secretary (R. 153).

At the first hearing testimony on land value was given by two witnesses for appellant, W. E. Spratt (R. 235–264) and F. M. Atkinson (R. 265–270), and by one witness for the Government, W. L. Mack (R. 183–206). These witnesses were engaged in

the general real estate business in St. Joseph.* Spratt and Atkinson both placed a value of 30¢ per square foot on Zone A (R. 246, 266). Mack placed a value of 35¢ per square foot on this zone for its special stockyard use, and 20¢ per square foot for general uses if the stockyards had not been located on it (R. 185–186).

At the second hearing testimony for appellant on land value was again given by Spratt (R. 768–796), and also by T. J. Quinn (R. 796–813), and for the Government by John A. Zelinski (R. 472–568). Spratt placed a value of 26¢ per square foot, and Quinn a value of 35¢ per square foot on Zone A (R. 770, 801). Zelinski valued it at $5,000 per acre, or 11½¢ per square foot ** (R. 490).

In preparation for the second hearing, with which we are now primarily concerned, Spratt, Quinn, and Zelinski collaborated in making an analysis of data with respect to sales and leases of property adjacent to and in the general vicinity of the appellant's stockyards. In each instance they obtained such information as was available from public records, and also additional information by interviews with grantors, grantees, and others who

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* The qualifications of these witnesses to testify on land value are given in the record (Spratt, R. 235–236; Atkinson, R. 265–266; Mack, R. 183–184).

** Spratt's second appraisal is respondent's Exhibit 132 (R. 769–770), Quinn's appraisal is respondent's Exhibit 134 (R. 801), and Zelinski's appraisal is Government Exhibit 128 (R. 489–490).

were familiar with land transactions in the vicinity. In this manner they made an analysis of approximately 147 different transactions (Gov. Ex. 128). Each appraiser made his own independent deductions and arrived at his independent conclusion as to the value of appellant's land (R. 771).

Factors Taken Into Account by the Appraisers

In considering the differences in the various appraisals notice should be taken of the factors which influenced the several appraisers and guided their judgments.

Zelinski made a thorough study of the location of appellant's stockyards, available railroad facilities, highways, topography of the land, and other factors serving to furnish a background for making an appraisal (Gov. Ex. 128). In his report there are incorporated the sales data which were assembled by the three appraisers. He stated that it was his endeavor "to base his values upon the values of similar adjacent and/or adjoining property" (Gov. Ex. 128, p. 2). He further stated that "the level of values established is not as low as might be contended for in a period such as that during which the appraisal was made, neither is it as high as might be established on the basis of the levels prevailing in the years from 1925 to 1929 inclusive" (Gov. Ex. 128, p. 16). He testified that the values which he "placed on these separate zones do not in any instance represent stagnation values" (R. 489). It was his opinion that the land in Zone A

could not have been sold under conditions at that time to produce the price at which he appraised it. (R. 489).

After gathering sales data, Zelinski "made a study of the use of the property on the ground" and "gathered such statistical information as * * * might have a bearing on the general value situation in the territory." He "interviewed the engineers at the City Engineer's Office and the Highway Department as to the nature and kind of improvements that served the city and the general territory, interviewed the Army Engineer's Office in Kansas City as to the nature and kind of improvements that were proposed for the river, what was being done in the way of protection and abutment work, what the records of the engineering department showed as to the condition of the river is so far as high and low water is concerned, as far as that might have a bearing on the values of the land in the general territory * * *" (R. 477). Zelinski then studied the zoning of the stockyards and after conference with appellant's appraisers reached the conclusion that the zoning which had been used in the previous proceeding would be satisfactory (R. 477). In his investigation Zelinski "personally viewed and studied each and every zone as shown on the map" (R. 478). He testified that the "transfers of property which took place within the general vicinity of the stockyards lands * * * are the data" which he had before him at the time he was arriving at his "con-

clusions as to the values of the individual zones" (R. 480). He "endeavored * * * to restrict the information purely to actual transfers of property and leases of property which might be indicative of value of the particular property that was covered." He "interviewed the parties to the transfer wherever they were available, or at least one of the parties, to verify the bona fides of the transfer to the extent that it was possible to do so" (R. 481). He testified that "in so far as the sales of industrial properties themselves were concerned, such as, for example, sales 6, 5, 3, 4, and 11, sales of that type", he "gave those consideration in making up" his "mind as to a level of industrial values in this general vicinity * * *." With respect to transfers like 19, 20, and 21, which are leases of areas of a semi-retail nature, he "gave consideration and some weight as to the sales as being applicable to a small portion perhaps of the areas of the respondent's [appellant's] lands, but as not being indicative of large industrial holdings held in what might be called assembled areas, such as Zones A, B, and C" (R. 482).

In testifying specifically as to the value of Zone A, Zelinski stated that this is the "zone upon which are located the major facilities of respondent such as the Exchange Building, the loading and unloading docks, the cattle, hog, and sheep divisions for the receipt and holding of livestock for immediate sale and related facilities." It was his opinion "that each and every portion of that

zone is" not "equally valuable." He testified that if he "cut out individual portions of that zone" he "might have a materially higher unit, and certain other portions might have materially lower units than $5,000 per acre." He "considered the land as being stripped of superstructures now thereon" and "stripped of such substructures as appeared in the engineer's inventory." However, he considered that certain "substructures such as those belonging to the public utilities of water and gas and electricity and items of that kind were available" (R. 486). In other words, Zelinski "considered the other superstructures and substructures thereon which were not owned by respondent as either remaining in place or available * * * to the land" (R. 486, 487). He "considered the land at its present grade * * * and as having all of its surrounding environments and facilities such as railroads, packing plants, availability of electricity and water, gas, proximity of the retail district of South St. Joseph and all of the surrounding conditions as existing just as they do today" (R. 487). Zelinski testified that he did "not consider the element of intensity of use in connection with this valuation except in so far as it is impossible to divorce one's mind from what goes on on a property." He "investigated intensity of use in connection with the determination of activity in the abutting properties" (R. 502). As a foundation and background for what he thought appellant's lands were worth, he

was trying to get into his mind "the range of values for the abutting and adjacent and adjoining lands" (R. 503).

Zelinski gave weight to five parcels or groups of sales which in his opinion had bearing in connection with the value of Zone A. One of those known as "sale 5" conveyed 0.31 of an acre to the St. Joseph Warehouse and Cold Storage Company, whose plant lies directly west of part of Zone A. The tract sold lies west of the plant of the purchasing company and was acquired in 1919 at the rate of $5,000 per acre or approximately 11.5¢ per square foot. While there was some relationship between the grantor and the grantee the circumstances were such as to lead Zelinski to believe that the purchase price reflected the real value (R. 518, 533; Gov. Ex. 128, p. 53).

The second sale, known as "No. 10", consists of a tract of land formerly a part of appellant's Zone N and just a short distance north of the northeast corner of Zone A. It contains 4.2 acres and was purchased in 1930 by the Union Terminal Railway Company from appellant. The consideration was $3,000 per acre, or a little less than 7¢ per square foot (Gov. Ex. 128, p. 58). In 1929, 1.2 acres of this tract was leased to the Shell Petroleum Corporation for an annual rental, which capitalized at 7% represents a value of $3,000 per acre (Gov. Ex. 128, p. 66). In the same year, another portion of it was leased to the Painter Oil Company at a rental

which so capitalized amounts to a value of $4,280 per acre, or less than 10¢ per square foot (R. 527; Gov. Ex. 128, p. 67).

The third group consists of sale 11 to the Larabee Flour Mills Corporation, sale 12 from appellant to an agent of the Union Terminal Railway Company, and sale 14 from such agent to the Larabee Flour Mills Corporation, the latter covering a portion of the land heretofore included in sale 12. These three tracts, 11, 12, and 14, lie immediately west of petitioner's Zone N, 11 being the most northerly of the tracts and 12 the most southerly and nearest to Zone A (R. 529–533). With this group, Zelinski considered 3 and 4 which lie immediately west of 11 and 14 and constitute the site of the St. Joseph Public Elevators (R. 533; Gov. Ex. 128, pp. 51–52). Sale 11, consisting of 5.74 acres, was made in 1918, at a price of $2,000 per acre or 4.6¢ per square foot (Gov. Ex. 128, p. 59). Sale 12 involved the conveyance in 1919 of 11.765 acres at $2,000 per acre or 4.6¢ per square foot (Gov. Ex. 128, p. 60). Sale 14 occurred in 1920, the consideration being $3,500 per acre or approximately 8¢ per square foot (Gov. Ex. 128, p. 62). Sales 3 and 4, containing slightly more than one acre, were made in 1920 at the price of $3,000 per acre or a little less than 7¢ per square foot (R. 533; Gov. Ex. 128, pp. 51–52).

The next group of sales were spoken of in the record as the "Grain Belt Mills Sales" and they were designated as "6, 7, and 8." These sales in-

volved three tracts of land lying approximately 800 or 900 feet west of the northerly part of the Cattle Division in Zone A (R. 524–527). Sale 6 consists of 4.71 acres purchased by the Grain Belt Mills at $2,660 per acre or approximately 6.1¢ per square foot (Gov. Ex. 128, p. 54). Sale 7 consists of one-half acre adjoining sale 6. It was purchased by the same company in 1922 at 8.4¢ per square foot (Gov. Ex. 128, p. 55). Sale 8 consists of 0.92 of an acre, adjoining sale 7, purchased by the Union Terminal Railway Company for the purpose of straightening its right-of-way. The consideration was approximately 12¢ per square foot (R. 524; Gov. Ex. 128, p. 56).

The Famo Mills sales designated as "34, 35, 38, 39, 40, and 41" represent the purchase of several lots located within the corporate limits of St. Joseph and having frontage on both the Rock Island Railway Tracks and Cherokee Streets, which is one of the principal retail streets in South St. Joseph. These lots are east of the Exchange Building and the Cattle Division in Zone A and are separated from that zone by the tracks of the Belt Railway and three trunk line carriers. The consideration for these sales varies from 4¢ per square foot to 28.2¢, the weighted average being 14.6¢ (R. 536; Gov. Ex. 128, pp. 81–82, 85–88).

Zelinski Applied Correct Principles

It is submitted that Zelinski applied the correct principles of land valuation and that the evidence

amply supports the results he reached through application of those principles. The brief review of Zelinski's testimony, and the summary of typical sales of similar property in the vicinity, undertaken above, should be sufficient to establish that Zelinski's value is supported by the sales of similar land adjacent or near to Zone A.

This Court, in the *Minnesota Rate Cases*, 230 U. S. 352, said (at pp. 454–455):

> And where the inquiry is as to the fair value of the property, in order to determine the reasonableness of the return allowed by the rate-making power, *it is not admissible to attribute to the property owned by the carriers a speculative increment of value, over the amount invested in it and beyond the value of similar property owned by others, solely by reason of the fact that it is used in the public service. That would be to disregard the essential conditions of the public use, and to make the public use destructive of the public right.*
>
> The increase sought for "railway value" in these cases is an increment over all outlays of the carrier and over the values of similar land in the vicinity. It is an increment which cannot be referred to any known criterion, but must rest on a mere expression of judgment which finds no proper test or standard in the transactions of the business world. It is an increment which in the last analysis must rest on an estimate of the value of the railroad use as compared with

other business uses; it involves an appreciation of the returns from rates (when rates themselves are in dispute) and a sweeping generalization embracing substantially all the activities of the community. For an allowance of this character there is no warrant.

Assuming that the company is entitled to a reasonable share in the general prosperity of the communities which it serves, and thus to attribute to its property an increase in value, *still the increase so allowed, apart from any improvements it may make, cannot properly extend beyond the fair average of the normal market value of land in the vicinity having a similar character.* Otherwise we enter the realm of mere conjecture. *We therefore hold that it was error to base the estimates of value of the right-of-way, yards, and terminals upon the so-called "railway value" of the property. The company would certainly have no ground of complaint if it were allowed a value for these lands equal to the fair average market value of similar lands in the vicinity, without additions by the use of multipliers, or otherwise, to cover hypothetical outlays.* [Italics supplied.]

This Court further stated the test to be applied, as follows (p. 451):

But, supposing the railroad to be obliterated and the lands to be held by others, the owner of each parcel would be entitled to receive on its condemnation, its *fair market*

> *value* for all its available uses and purposes. *United States* v. *Chandler-Dunbar Water Power Co.*, decided May 26, 1913, 229 U. S. 53. If, in the case of any such owner, his property had a peculiar value or special adaptation for railroad purposes, that would be an element to be considered. *Mississippi, &c. Boom Company* v. *Patterson*, 98 U. S. 403; *Shoemaker* v. *United States*, 147 U. S. 282; *United States* v. *Chandler-Dunbar Co., supra. But still the inquiry would be as to the fair market value of the property; as to what the owner had lost and not what the taker had gained. Boston Chamber of Commerce* v. *Boston*, 217 U. S. 189, 195. The owner would not be entitled to demand payment of the amount which the property might be deemed worth to the company; or of an enhanced value by virtue of the purpose for which it was taken. [Italics supplied.]

In *Clark's Ferry Bridge Company* v. *Public Service Commission of Pennsylvania*, 291 U. S. 227, an order of the Pennsylvania Commission prescribing a tariff of tolls to be charged on a bridge was challenged. Among other things, it was claimed by the company that there should have been allowed an additional $100,000 in the valuation for "the special value of location." This claim was based upon the reports of the company's engineers to the effect that the location of the bridge was more advantageous than any other point for miles in either direction, because the river was

narrower and the conditions of the river bed more favorable for bridge construction at the place where the bridge had been built. The engineers made their estimates upon what they thought one would be willing to pay for the present site in preference to other sites in the vicinity because of the additional cost of building a bridge elsewhere. In rejecting the company's contention in this respect, this Court said (at p. 238):

> In the determination of the value of its property appellant was entitled to be allowed the fair market value of its real estate for all its available uses and purposes, which would include any element of value that it might have by reason of special adaptation to particular uses. But it was not entitled to an increase over this fair market value by virtue of the public use.

Appellant's Appraisers Disregarded Principles of Land Valuation Established by This Court

It is submitted that a fair consideration of the testimony of appellant's appraisers reveals that they gave weight to the special use to which the land in Zone A is being put; to the fact that such land is being employed in rendering stockyard service, a public use; to the present use, rather than to availability or adaptability for use.

Thus, Spratt found that the railroads, packing houses and stockyards are "three enormously large institutions that are all intertwined and interlaced and so bound together and interlocked, and so ex-

ceedingly dependent each upon the other by a mutual business relationship that the three institutions almost constitute one great big industrial proposition" (R. 239). He referred to an "element of potentiality which contributes to all real estate values", and stated that "in evaluating land * * * its future use seems to contribute to its greatest worth" (R. 240).

Atkinson collaborated with Spratt in the making of their 1929 appraisal. They "examined a large number of records of real estate transfers of property adjacent and in the vicinity of the stockyards and of the packing houses" (R. 242). They found that "outside of the Belt Railway circle * * *, the value * * * is much less than that of the allied interests properties" (R. 242). It was their view that "transfers on Illinois Avenue [within the general stockyard area] more correctly reflect and indicate the value of the stockyards land than those of the outlying dormant inactive properties * * *" (R. 242). Spratt testified that they had "not taken these values and literally applied them to the adjoining land but * * * considered them altogether with many other things which" they "took into consideration before reaching" their "final unit value" (R. 242). "In valuing the land of the St. Joseph Stockyard Company" they gave "it the value of the only adjacent similar land, *the packing house land and the railroad property*" (R. 242). Spratt testified that it was "*purely and solely on account of the great volume*

of business and its profitable and useful occupancy by the wholesale merchants and manufacturers and equally so by the stockyards and its allied industries which breathes the greater values into the land they occupy" (R. 243). In his opinion, it would be unfair to "judge the value of a live, useful and working property by the value of an idle, slothful, inactive tract which happens to lie adjacent and adjoining, whose potential worth is its greatest consideration, and whose final occupancy may be of entirely different character and purpose" (R. 243). Spratt stated in his report that "when estimating values we do not place very much emphasis on what the land or an industry has yielded profit in the past * * * but * * * we contemplate what the future promises" (Resp. Ex. 132, p. 17). He testified that he did not "include the value of superstructures" but thought "that *having superstructures upon the land increases the value of the land"* (R. 254). He testified that "the income derived from its highest use under good management would have a bearing * * * upon its value for industrial purposes" (R. 255). It was his view that "Outside of sentiment, and of a speculation, *property is only valuable because it produces an income, or returns a profit, or serves a purpose"* (R. 245). Atkinson, who corroborated Spratt's value at the first hearing, testified as follows:

> However ideally located or perfect the setting may be, after assembling this land and the cost of filling the land, putting in water

> mains, electric lights, and sewage system and other tremendous expenditures have much to do with my opinion as to the values of this land for the specific purpose for which it is being applied, I think, forever (R. 267).

That Spratt based his appraisal of Zone A upon a consideration of the fact that it was being intensively employed for a special use is further shown by his treatment of Zone B, which is a tract of about seventeen acres adjoining Zone A. In each of the appraisals Spratt valued Zone B at one-half the square foot value which he placed upon Zone A (R. 253, 770). He testified that Zone B "is of the same character as the land occupied by respondent's hog sheds and has equal railroad service" but that "considering that it is not actually in use by respondent for the immediate conduct of its business but is in waiting, we do not value this tract as high as Zone A" (R. 246). This was because it had "not been brought into its highest and best use" but "*when it has been brought into that use I think it would be worth just as much as the land in tract A*" (R. 260). The testimony of Spratt clearly demonstrates that his valuation of Zone A was influenced by the fact that there was a successful stockyard business being conducted on the land, whereas Zone B was not, he thought, being employed for its highest and best use, hence was worth only half as much as Zone A. He insisted that he valued bare land; yet his own testimony contradicts that statement. At the second hearing

he said that he "followed the same general methods used" in his "1929 appraisal" (R. 769).

Quinn made a separate appraisal and in his report set up somewhat the same general background which furnished the basis for Spratt's appraisal (Resp. Ex. 134). He testified that he "did give the use that the various zones were put to, and are being put to, consideration" (R. 805). In referring to Zone B he stated that "with respect to topography, rail service, and accessibility, this ground is much the same as Zone A which lies immediately to the north" (Resp. Ex. 134, p. 11). He placed a value on Zone B of 15 cents per square foot as compared with 35 cents per square foot for Zone A (R. 801). He said that he could not recount all the reasons for the difference but he testified that he "found it difficult to get away from the fact that people, and the assembling of people, the gathering of people, have a tendency to create values, and certainly in Zone A that is one factor that probably is accountable for the difference of 20 cents, as much, probably as great a factor as any that I can think of at the present time" (R. 809). Obviously Quinn was not observing the principles enunciated in the *Minnesota Rate Cases.*

Secretary's Land Value is Liberal Because of Consideration Given Belt Transaction

Appellant contends that the Secretary erred in the manner in which he analyzed the sale of the Belt Railway (Br. pp. 164–165). The Belt Rail-

way lands constitute a right-of-way forming a hollow rectangle with rounded corners and projecting spurs surrounding the main area of the actively used stockyards and the large packing plants (orange coloring on sales map, Gov't. Ex. 128, Supplemental Map 3). At the time of the first hearing and for some years prior thereto, the stock of the Belt Railway Company was wholly owned by appellant, and the railway was operated under the direction of appellant's executives (R. 257). Appellant owned the land which constituted the right-of-way of the Belt Railway and leased it to the railway company (Gov. Ex. 135, p. 31). In 1923 Spratt appraised appellant's land leased to the Belt Railway as a right-of-way (Gov. Ex. 135, p. 5). Spratt obtained his value of the Belt land by comparing it with appellant's adjoining land, but in doing so he capitalized at 6% the income derived by appellant at its then prevailing rates. Thereupon appellant, whose officers were the same as those of the Belt Company, leased the land to the Belt at a rental which would produce 6% of the value thus found (R. 244). In 1929 Spratt appraised Zone A at 30¢ per square foot based primarily upon the valuation theretofore found for the railway right-of-way (R. 244, 257). So up to this point it is obvious that the whole value of the stockyards land and of the right-of-way had been calculated by Spratt upon a capitalization of the stockyard company's earnings under the then existing rates—

obviously a fallacious method when rates themselves are fixed by regulatory authority.

In 1929 appellant and the Belt company entered into an arrangement whereby the title to the right-of-way was transferred from appellant's books to those of the Belt at a stated consideration which was the same as the appraised value placed upon the right-of-way by Spratt in the method above described (Gov. Ex. 128, p. 109; Resp. Ex. 132, p. 16). In the same year appellant sold to outside interests the entire capital stock of the Belt (R. 74–75; Resp. Ex. 132, p. 13). But when Spratt, in 1932, came to make a reappraisal of Zone A he relied upon the the consideration stated in the mere paper transaction between appellant and its subsidiary, rather than upon the later sale to outside parties.

In 1930 there was a recapture proceeding pending before the Interstate Commerce Commission involving excess income of the St. Joseph Belt Railway Company. In this proceeding Spratt and others testified that the total value of the Belt property for rate-making purposes in the year 1928 was $2,500,342 (Gov. Ex. 135, p. 158). In reaching this valuation he had included the land at 30¢ per square foot (Gov. Ex. 135, p. 25).

In the fall of 1929, however, had occurred the above-mentioned sale of all the Belt Line properties for $1,500,000 (Resp. Ex. 132, p. 13). The transfer of ownership was effected by a transfer of the entire capital stock, there being no other securities outstanding. The actual sale of the prop-

erty, therefore, was at a price which was 60% of its value as appraised by Spratt and others. There is nothing in the record to indicate, and it is not to be presumed, that this discrepancy between the appraised value and the sale value applied in any greater or less degree to the land than to the other elements of the property. It is reasonable to conclude that the sale value of the land was 18¢ per square foot, that is, 60% of the 30¢ per square foot estimated by Spratt. Thus the use of this Belt property as a criterion would point to a value midway between the 26¢ testified to by Spratt and the 11.5¢ testified to by Zelinski.

The Secretary thought that consideration of the Belt Railway transaction furnished some warrant for finding a higher land value than that testified to by Zelinski. Spratt, in 1929, had thought this property was worth 30¢ per square foot, and in 1932 he thought it was worth 26¢ per square foot. If the value in 1929 was 18¢ per square foot, and this value is decreased by the same ratio as Spratt decreased his appraisal of 30¢ the result would be 15.6¢ per square foot as the value of the Belt Line property in 1932. On the record as a whole, giving full consideration to the testimony of Zelinski and to the Belt transaction, the Secretary found that 16¢ per square foot was the fair value for rate purposes of Zone A. It is submitted upon the foregoing analysis of the evidence that this finding is liberal.

Appellant contends that in considering the Belt Railway transaction the Secretary erred as to the amount of land involved. The Secretary used 91.41 acres, which was the amount claimed by the Railway in the proceeding before the Interstate Commerce Commission (Gov. Ex. 135, p. 31). However, it is not material here for the reason that the Secretary mentioned 91.41 acres merely to describe the land, and not as a basis for a calculation (R. 81). *It was, moreover, the analysis of the Belt Railway transaction which led the Secretary to find a higher value than was testified to by Zelinski. Even if the Secretary had improperly considered the Belt Railway transaction, at least the effect thereof was to give the land in Zone A a higher value than it otherwise would have had.*

The Secretary Did Not Adopt Stagnation Value

Appellant infers that the value found by the Secretary was predicated upon a drop in land values of 36% due to the depression (Br. p. 161). No such conclusion can be drawn from any finding in the Secretary's order, and the foregoing review of the evidence shows that *the sales supporting the Secretary's valuation were made, for the most part, prior to the depression when land values were admittedly higher than they were later.*

From the foregoing analysis it is clear that the record would have supported the Secretary in finding 11.5¢ as the square foot value of Zone A.

The evidence shows that Zelinski, who placed a value of 11.5¢ per square foot on Zone A, carefully analyzed the sales of adjoining property or property in the vicinity of Zone A. In contrast to Zelinski's method the evidence clearly demonstrates that Spratt and Quinn gave consideration to factors connected with present earnings on Zone A as it is now operated and used for stockyards purposes.

The Value of Zone N Supports Value Given Zone A

Appellant contends that, although the Secretary found a value of 7¢ per square foot for Zone N, the record shows it would cost 18.5¢ per square foot to "fill" Zone N sufficiently to bring it up to the level (and availability for use) of Zone A, inasmuch as Zone N is now several feet lower than Zone A. It is contended that if the 18.5¢ thus required is added to the 7¢ found by the Secretary to be the value of Zone N, the result—25.5¢—is a fair measure of the value of Zone A. In other words it is contended in effect that 18.5¢ represents the difference in value between Zones A and N (Br. p. 174).

It is not a fact (as appellant states) that appellant's claim of 18.5¢ per square foot for filling (based upon a grading cost of $1 per cubic yard) is "absolutely undisputed in the record." The chief valuation engineer for the Government tes-

tified that such grading work could be performed at a cost varying from 26.5¢ per cubic yard to 52.8¢ per cubic yard, depending upon the method used (R. 888–889). Appellant ignores the statement of its own engineer that on the surrounding St. Joseph Belt Railway right-of-way he had accepted a figure of 35.5¢ per cubic yard as the cost of fill (R. 613). Moreover, appellant used this unit cost of filling to support its claim for an increase in value of filled land over unfilled land, in connection with the valuation of the lands of the St. Joseph Belt Railway (Gov. Ex. 135, p. 81). Giving effect to these costs, it is apparent that the fill would, at the very most, cost less than 9¢ per square foot if the entire area of Zone N were filled to an average depth of 5 feet. The record discloses that the 5 foot average fill would be more than sufficient to make Zone N comparable to Zone A (Gov. Ex. 128, Supplemental Map 4; Resp. Ex. 114). These exhibits show that the 5 foot fill applies only to a small portion of Zone N and that 3 feet would more nearly reflect the average fill for the entire zone, but even if a 5 foot fill were necessary throughout, 9¢ per square foot would more than make up the difference in value between Zone N and Zone A. Appellant's witness, Spratt, and also Government witness, Zelinski, testified that the value of Zone N was 7¢ per square foot (R. 490, 770). The Secretary adopted this valuation for Zone N. If the difference of 9¢ per square foot for fill were added to the value of Zone N, as was indicated by appel-

lant's own witness as well as the Government's witness, the result would be 16¢ per square foot, which is the same as the value found by the Secretary for Zone A.

Conclusion as to Land Value

Although the St. Joseph realtors who testified for the appellant in the hearing before the Secretary were of high standing in their vocation, their opinions had no such conclusive force that there was error of law in the refusal of the Secretary to adopt them. The testimony of these realtors had "no such commanding quality" as "to apply coercion to the judgment of the appointed tryer of the fact" and exclude other choice. *Dayton Power & Light Co.* v. *Pub. Util. Comm. of Ohio,* 292 U. S. 290, 301.

It is submitted that the evidence in this case would amply support a valuation lower than that found by the Secretary for Zone A. To the extent that the Secretary found a value in excess of Zelinski's value, the Secretary was liberal. Under such circumstances it is submitted that the Secretary's finding should be sustained.

C. THE SECRETARY'S FINDING OF THE COST OF REPRODUCTION NEW LESS DEPRECIATION OF APPELLANT'S STRUCTURAL PROPERTY SHOULD BE SUSTAINED.

(Appellant's Brief, Point XIII, p. 130)

The only question which is raised by appellant in connection with the valuation of the structures concerns the amount of depreciation deducted by the

Secretary from the estimated cost of reproduction new.

It is to be noted that the Secretary adopted reproduction cost as the sole standard of value in connection with appellant's structural property unmodified by any consideration of actual or historical cost. It is furthermore to be noted that there was no substantial dispute between the appellant and the government at either of the hearings over the cost of reproduction new (R. 88–91). In view of the fact that many of appellant's structures were built more than 30 years ago (R. 626) at a time when labor and materials were much cheaper than now, it is obvious that an extremely liberal policy in respect to the determination of fair value was pursued towards appellant. Appellant claims, however, that the amount deducted by the Secretary for accrued depreciation from such estimated reproduction cost new is too great.

The Secretary found that the percent condition of appellant's used and useful structures was 76.04 (R. 104), whereas appellant contends that the percent condition was at least 89 (R. 928). The government engineer, Henrici, testified that the percent condition of the property was 75.82, but after making allowance for additions and betterments, which he did not depreciate, he arrived at a percent condition for all the property, including that found to be not used and useful, of 76.93 (R. 429). Appellant's engineer, Kosters, testified that the percent condition was 89 (R. 600). The deduction for

accrued depreciation on appellant's assumption of an 89 percent condition of the property amounts to $337,437, while on the testimony of Henrici of a 76.93 percent condition the deduction would amount to $648,631.

The only point which appellant now raises with respect to the findings of the Secretary as to accrued depreciation is the technical one that the findings of percent condition are not based upon any legal evidence (Br. p. 130) for reasons indicated below. However, before discussing this point, it is pertinent to compare the $337,437 deduction for accrued depreciation now claimed by appellant with the accumulated depreciation reserve now carried on appellant's books. While it is not expected that the accrued balance in the depreciation reserve will be exactly offset by the amount of accrued depreciation in the property, a too conspicuous disparity between the two figures, especially in the case of a property which has reached a normal operating condition, is at least a subject for comment. As indicated hereafter, *infra,* p. 98, the accumulated balance carried in appellant's depreciation reserve amounted in 1932 to $1,771,063.64. With this figure may be contrasted the accrued depreciation of $648,631 found by the Government witness, and appellant's claim that such amount should be still further reduced to $337,437.

Turning now to appellant's contention that the Secretary's finding as to accrued depreciation is

not based upon any legal evidence, this contention is advanced on the ground that the Government engineer, in arriving at his estimate of percent condition at the second hearing, used an average of the percentages reported by five of his assistant engineers who inspected the property for the purpose of determining its percent condition, and that those assistant engineers were not produced as witnesses (Br., p. 132). Appellant contends that since Henrici was the only witness who testified for the Government on percent condition at the second hearing, and his testimony was based upon an average of the percentages recommended by his five assistants, it is not legal evidence, and that as a result the only evidence upon this point in the record is that of appellant's engineer (Br., p. 132).

Henrici testified at both hearings (R. 211, 419). In making his appraisal prior to the first hearing he personally made a thorough physical inspection of appellant's property, with the aid of two of his assistants (R. 437). For some years he had been the chief valuation engineer for the Packer and Stockyards Division of the Department of Agriculture and he had had a great deal of experience in appraising stockyard properties (R. 211–212). In making an appraisal in 1927 (which was introduced at the first hearing in 1929), each engineer working under Henrici's direction "set down his opinions as to the percent conditions" during "the process of making an inventory." Henrici testi-

fied that "those percent conditions after being inspected by the chief valuation engineer [himself] were discussed with the engineers making them and the final percent condition determined" (R. 213). During the first hearing some revisions were made in the estimates of the percent condition of some of the units of the property as a result of a reinspection by two of the engineers working under Henrici's direction (R. 213). That Henrici used the personal inspection method prior to the first hearing in 1929 is clearly established by the evidence (R. 214).

With respect to the procedure employed in determining the percent condition prior to the 1932 hearing, Henrici testified as follows (R. 428–429):

> After the cost of reproduction new was found, the next step was to ascertain the condition percent of the various structures in order to arrive at the cost of reproduction less depreciation. * * * I stated the principles used in the previous appraisal and the same principles were used in the 1932 appraisal except that I had each of the five engineers furnished with a list of all the property. Each of these engineers put down on paper his conception of the proper percentage condition of that property and this is shown in Government Exhibit No. 114 under columns headed 1, 2, 3, 4, and 5. The numbers refer to my engineers Cushing, Galbreath, Johnson, Schramm, and McClintock. The column

headed "Average" is a mathematical average of the five estimates. These estimates were made independent of each other. One man did not know what the other percentages were until he compiled his report.

Appellant now contends that the Secretary had before him no competent evidence on percent condition other than that of appellant's engineer, because Henrici's testimony at the second hearing was based upon the average of the estimates of percent condition made by these five assistant engineers, who were not called as witnesses.

It is well recognized that in presenting evidence as to appraisals in rate proceedings where the work of making an inventory is greatly involved, the engineer in charge may have a number of engineers assist him; although it is customary for the chief engineer to present the completed appraisal. It is also recognized that these assistants may be required to appear and testify as to the particular part of the appraisal for which each was responsible if occasion makes it necessary. It is customary for the party desiring to examine these assistants to make the demand known some time during the hearing.

The fact is that at the second hearing the Government attorneys offered to produce Henrici's assistant engineers so that they might be cross-examined. Henrici's engineering staff has headquarters at Kansas City, Missouri, only a short dis-

tance from St. Joseph, Missouri, where the hearing before the examiner was held, and his assistants were readily available. Although the Government offered these men as witnesses, appellant's counsel did not avail themselves of the opportunity offered for cross-examination.*

* At the second hearing the Government was represented by Mr. J. S. Bohannan, and appellant by Mr. William N. Strack. Mr. Bohannan appreciated that appellant might wish to cross-examine some or all of Henrici's assistant engineers and he offered to produce them as appears from the following colloquy:

"Mr. BOHANNAN. We offer in evidence Government Exhibit 118, the volume heretofore identified by that number and described by the witness, and lest I forget it again, as I did at the time of offering the appraisal which is Government Exhibit 114, and all the exhibits which have been offered since then, if there be any objection to any of those exhibits on the ground that Messrs. Cushing, Galbraith, Johnson, Schramm, McClintock, Snider, or Bush, who engaged under Mr. Henrici's direction and supervision in the making of those exhibits have not testified, we will produce any or all of those gentlemen for cross examination respecting these exhibits.

"Mr. STRACK. Ask the same ruling, that it be deferred until we have a chance to examine them further.

"The EXAMINER. Ruling will be deferred on Government Exhibit 118 (pp. 482, 483, original transcript of testimony of second hearing)."

Just previous to the time of making this statement the Government had offered in evidence Government Exhibits 114, 114A, 114B, 114C, 115, 116, and 117 and appellant's counsel had asked that ruling be deferred on their admission, which request was granted by the Examiner (pp. 474, 478, 479, 481, original transcript of testimony of second hearing). At the conclusion of Henrici's cross-examination the Exami-

There can be no question as to Henrici's competency, and it is not questioned on this record. His methods and his qualifications for the performance of his work have been carefully considered in

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ner admitted the exhibits in evidence after appellant's counsel made his objections in the following words:

"Mr. STRACK. I am now prepared to state objections to the Government Exhibits 114 to 120, inclusive, which have been heretofore offered in evidence.

"No objection to Exhibits 114, 114–A, B, and C, and 115, other than the general objection we have made heretofore as to the power of the Secretary to find the value of the property of respondent and which we understood was to apply all through this proceeding.

"Exhibits 116, 118, and 119 purport to show comparisons with the appraisal of Stone and Webster Engineering Corporation, and in many instances we have had no opportunity to fully check these, and other than the weight which these exhibits might have, I don't know of any particular objection we would have. I naturally assume that the real test of the comparison, of course, would be the two appraisals themselves, which are put into the record.

"Exhibit No. 117 is immaterial, irrelevant, incompetent. I think the witness stated he didn't use it.

"Exhibit No. 120 is incompetent, irrelevant, and contains self-serving declarations.

"The EXAMINER. Objections overruled, and Government Exhibits 114, 114–A, 114–B, 114–C, 115, 116, 117, 118, 119, and 120 are received (pp. 545, 546 of the transcript of testimony of the second hearing)."

The above colloquy was inadvertently omitted from the narrative statement of the original transcript of record which was prepared prior to submission of the case to the Secretary, which narrative statement forms the basis of the record before this Court on appeal. Appellant's counsel however, have been advised that appellee is citing in this brief the above colloquy from the original transcript of record and they have stipulated that it is a true and accurate statement of what the original record shows, and they have

other cases in which he testified, and have been judicially approved. Henrici followed the same methods of estimating percent condition in his examination of the properties of appellant as he followed in reaching his estimates in the proceedings involving rates at the Denver and Omaha stockyards, which methods were considered and approved by district courts in suits brought respectively by the Denver and Omaha stockyard companies to enjoin the enforcement of orders based in part upon Mr. Henrici's testimony.*

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stated that they make no objection to its use and that it may be considered as though it appeared in the printed record before this Court. A stipulation to this effect has been filed with the Court.

Henrici's appraisal, including the determination of the cost of reproduction new less depreciation is contained in Government Exhibits 114, 114A, 114B, and 114C, which are before this Court as original exhibits. The foregoing statement by appellant's counsel clearly shows that no objection was made to those exhibits on the ground that Henrici's assistants had not been called to testify. It shows not only that appellant's counsel did not object to the competency of Henrici's exhibit covering his appraisal and the fixing of the percent condition of the property, but also that the Government offered to produce Henrici's assistant engineers for cross-examination by appellant's counsel and that appellant's counsel did not accept the offer. Clearly appellant's counsel waived his right to examine these five men with respect to their reports to Henrici on the percentage condition of the property.

* In *Denver Union Stockyard Company* v. *United States*, 57 F. (2d) 735, the Court sustained Henrici's findings of percent condition, saying (at p. 743):

"After arriving at the reproduction cost new of the properties, the Secretary found that the properties were in 83.8 percent condition. Here again there was a conflict between the engineers. Both engineers inspected the properties, and

The element of judgment enters into the determination of percent condition of structural property. Inasmuch as Henrici had carefully inspected appellant's property prior to the first hearing and had given his independent judgment upon its condition, he was in a position to check the composite judgment of his five assistants who inspected the property prior to the second hearing.

It is submitted that the Secretary's finding as to reproduction cost new less depreciation is lawful, and is based upon legal evidence.

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from their informed and skilled judgment made an estimate as to the present percent condition of the properties. The engineer for the petitioner estimated that the properties were in 95 percent condition. *Mr. Henrici, the government engineer, is unquestionably a man of standing in his profession, and his evidence undoubtedly reflects his deliberate opinion.* Both engineers followed the approved method of arriving at their conclusions. *Wichita Gas Co.* v. *Public Service Commission*, 126 Kan. 220, 268 P. 111. When it is considered that many of the structures are more than 40 years old, the Secretary's finding in this respect appears to be entirely fair." [Italics supplied.]

In *Union Stock Yards Company of Omaha* v. *United States*, 9 F. Supp. 864, the Court upheld Henrici's findings as to percent condition. In that case the Court said (pp. 881–882):

"The plaintiff challenges the Secretary's findings that the percent condition of its structural property, allowing for accrued depreciation was, 84.7. The Secretary considered the testimony of an engineer called by the plaintiff and also that of an engineer employed by the government and the findings reflect that he fully appreciated the points of difference between them. It is not questioned that both engineers were men of standing in their profession and both follow, in the main, methods that have been approved by the courts."

D. THE SECRETARY PROPERLY REFUSED TO MAKE A SEPARATE ADDITIONAL ALLOWANCE FOR GOING CONCERN VALUE OVER AND ABOVE THE AMOUNT THEREFOR WHICH WAS INCLUDED IN THE OTHER ITEMS GOING TO MAKE UP THE RATE BASE

(Appellant's Brief, Point XII, p. 109)

It has long been recognized in public utility rate cases that in the valuation of operating properties there is an intangible element of value which inheres in the property because it is a going concern.* Thus this Court stated in *Des Moines Gas Co.* v. *Des Moines,* 238 U. S. 153 (at p. 165):

> That there is an element of value in an assembled and established plant, doing business and earning money, over one not thus advanced, is self-evident. This element of value is a property right, and should be considered in determining the value of the property, upon which the owner has a right to make a fair return when the same is privately owned although dedicated to public use.

The Secretary of Agriculture was fully cognizant of this principle, and in determining upon a rate base gave due consideration to appellant's going concern value. Thus the Secretary said (R. 111, 112):

> That there is an element of value in an assembled and established plant doing busi-

* The many decisions of this Court involving the treatment of going concern value by rate making bodies were recently reviewed and discussed in *Los Angeles Gas & Electric Corp.* v. *Railroad Commission,* 289 U. S. 287, 313–315.

> ness and earning money over one not thus advanced is recognized. * * * Thus, in the rate base herein found, there is included a large amount for going concern value, but such value is so inextricably interwoven with other value that any attempt to segregate it and set it up alone would lead to a conclusion as arbitrary and illogical as usually is found when such attempts are made.

The Secretary's treatment of going concern value is set forth fully in his findings (R. 107–112). From them it appears that, although no separate allowance for going concern value was made, the Secretary adopted valuations of the structural properties as a whole which were based upon the fact of their successful operation, and that the rate base adopted by the Secretary included a substantial amount for going concern value which was inextricably interwoven with other values (R. 112). It further appears from the findings that the Secretary was of the opinion that the evidence offered by appellant did not require or warrant a separate additional allowance for going concern value over and above the allowance for that value included in the valuation of the structural properties (R. 108–111).

Nevertheless, in the present case appellant asserts that the element of going concern value was not included in the valuation adopted by the Secretary, and contends that an additional allowance for going concern value should have been made.

Appellant's Evidence on Going Concern Value Is Wholly Speculative

Appellant's contention that an additional allowance for going concern value should have been made must rest, in the final analysis, upon the testimony of one witness, Mr. L. R. Howson, who testified at both hearings (R. 273–333, 850–866). Howson's method of determining an allowance for going concern value consists of an attempt to estimate the cost of reproducing the business which appellant now enjoys, by assuming that some persons find themselves in the peculiar position of having the choice of buying appellant's business as a going concern, or of building an exactly similar property; and that they choose the latter course and appellant immediately goes out of business. Howson's measure of going concern value is the cost to the new stockyard, under these circumstances, of attaching appellant's business. His technique is summarized in his own language and is set forth below.*

* One starting his computation of going value * * * must have the following data: First, the cost of reproducing the physical property as of the date of inquiry; second, how much time in the near future it will take to rebuild the plant, that is an engineering question and has to be estimated everywhere whenever any engineering construction is undertaken; third, how much time it will take after the physical plant is built and ready to operate before it will have a full line of clients, or customers, and a fair normal or proper revenue; and fourth, how rapidly this business will be acquired, or, in other words, how much business can be readily secured, how much more can be secured with a reasonable expenditure of time and effort; and, finally, how much of the business of the

In applying his theory to appellant's business, Howson contended from the experience of the preceding five years that there would be an average yearly business of 54,275 cars of livestock, which would constitute the yearly business to be recovered by the hypothetical new stockyard (R. 280). He obtained speculations from officials of appellant and from representatives of local commission firms

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present company can only be attached by great effort and considerable outlay in cost, if at all. It is also necessary to know the value of money properly secured, and the value of money used in the particular business under consideration; in other words, fair return. It is also necessary to have a knowledge of the recent income growth of the business that is under consideration. Having these data, it is then practicable through the forecasting and comparison of two sets of accounts to compute going value. These two accounts are: first, the income and operating account of the company, as it now exists, forecasted into the reconstruction or reacquirement of revenue; and second, an exact similar set of accounts for a plant not yet conceived, but an exact duplicate, exactly similar in its physical make-up, and in its ultimate business capacity during the period when the physical plant is being reconstructed and the business rearranged. A comparison of these two sets of accounts reduced to present worth, as of the date of valuation or the date of the computation, gives a measure of the going value of the property by the comparative method. It can be visualized in this case by assuming that there is an investor ready, willing, and able on June 30, 1929, the date of valuation, who desires to enter the stockyards business in St. Joseph. His first procedure would be to call upon the management of the present yards, tell him of his desire to go into that business, and ascertain from them if the property can be acquired. They place a price on it which we are assuming is the cost of the physical plant plus their measure of going value. The prospective purchaser takes an option at that price, he then employs an engi-

in regard to the probable period required by a new stockyard to recover this amount of business, and the percentage which would be recovered during each year of the recovery period (R. 280–281). From these estimates Howson decided that it would take five years to recover the business and that "with the rate of recovery established, it is possible through a study of the present income and

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neer to tell him what it will cost to reproduce that property. He, the engineer, estimates the physical cost of reproduction and advises his client as to the results. The client, or the prospective buyer, then returns to the manager of the stockyards company and tells him that he is advised that the property can be reproduced for an amount considerably below that mentioned in the option.. The management of the yards tell him that they are selling more than a physical plant, they are selling a plant with an established business, not only with the capacity for earning but one that is actually earning. The prospective investor is then confronted with two alternatives, he may either buy the existing plant at a price including its going value in which case he immediately steps into the present revenues, or he may decide to build an exactly similar plant, which over a period of time will develop earning capacity equal to that of the existing yards. Assuming he takes the latter course, it will take him a year to build the plant. Obviously, during that period he will receive no revenue from it; the only revenues being from income or idle capital plus that previously allowed as lost interest during construction. Then after the plant is finished, which we will say can be accomplished in one year at a cost estimated as the reproduction cost of the property, he will find that during his year's interval much of the receipts of the yards will have been diverted to other yards, and can only be reattached with considerable effort. By intensive work, however, he assumed that after a period of years all of this business, or its equivalent, can be reattached to the yards, and if at that time the prospective investor, or the

operating accounts to estimate the income and operating costs of the starting plant during the period when it is reacquiring the business'' (R. 282).

Howson adopted the one-year construction period used by valuation engineers as the basis for their calculations of certain overheads, such as interest during construction, and he assumed that during that year all the business theretofore enjoyed by appellant would be dissipated (R. 279). He then undertook to ascertain the period of time which would elapse after the new yard began op-

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builder, as he now is, calls in an auditor and asks him to make a comparison of his financial structure under this building program, as compared to what it would have been if he bought the yards, he will find that the net revenues will have been less than they would have been had he purchased the going or operating yards, by an amount which is the amount computed for going value; that is, the amount he could have afforded to have paid, in addition to the cost of reproducing the physical plant and been even, whichever course he would have pursued. That, as I see it, is a measure of the going value of this property by the cost of reproduction or comparative method. * * * (R. 277–278.)

* * * The computation of going value by this method, which is an estimate of the cost of reestablishment of an income, is largely dependent in amount upon the amount of income of the business to be acquired and the time required for its acquisition. It is therefore necessary to ascertain the facts relative to the income, its growth, the source from which it is derived, and the factors affecting its recovery (R. 280).

* * * Before starting my computation I had to assume some particular amount of going value and I worked it through and tested it out and if my test showed the assumed amount was materially wrong I would have to start all over again (R. 284).

erations before its receipts and resultant income would be equal to those now possessed by appellant (R. 281). He also sought to ascertain what percentage of appellant's present receipts of livestock would be recovered by the new yard during each year of the recovery period and the revenues which would be realized from such receipts (R. 281). He computed the expenses of operation for each of the recovery years by a process of adjusting the variable expenses of the test year in accordance with the volume received in each of the recovery years. He then determined the net operating income for the construction year and each of the recovery years and deducted these amounts from the net operating income of the existing plant for the test year. The sum of the present worth of these differences represents his measure of going concern value (R. 277, 282). At the first hearing he reached the result that appellant had a going concern value of $666,666 (R. 284). At the second hearing he followed the same method but arrived at the result of $294,000, $358,000, or $472,644, depending upon which of several valuations were used and also depending upon what rate of return and what allowance for depreciation reserve were used (R. 853–854).

Stated otherwise, going concern value, according to Howson, is measured by the aggregate of the supposed deficiencies of income which a mythical stockyards would earn during the recovery period

under that which is actually earned by the existing stockyards during the test period.

It should be observed with respect to Howson's theory that at least two of the factors which entered into his computations lie wholly outside the boundary of human experience or knowledge; (1) the length of time necessary for the newly built stockyard to recover the business presently enjoyed by the existing stockyard, and (2) the percentage of the recovery which would take place during each year of the recovery period. Howson admitted that "none of the commission men had ever heard of a case where a group of people decided to build a new stockyards and the old stockyards gave up the ghost and went out of business", nor had any of the officers of appellant ever heard of such a case (R. 294). He did not think that the facts he had assumed ever had actually occurred, and he admitted that he has "never gone through a stockyards business reconstruction, nor has anyone else to my knowledge" (R. 296).

His assumptions as to period of recovery, percentage of recovery during each year of such period, cost of attaching the present company's business to a new stockyards, etc., were at best guess work. The conclusions of Howson with respect to the deficits which might be incurred by a mythical stockyards seeking to start anew under hypothetical conditions and to attach business

equivalent to that now enjoyed by appellant within a given period have no evidentiary value as to going concern value.

Witness Howson has presented his theory in a valuation and recapture proceeding before the Interstate Commerce Commission. *St. Joseph Belt Railway Co.*, 133 I. C. C. 523. In rejecting his theory, the Commission said (at p. 527):

> The analysis of the witness is so replete with assumptions and estimates as to render it worthless for all practical purposes. The whole method consists of a presentation in new form of an estimate of the deficiency below a fair return which the carrier, if reproduced on valuation date, would suffer before it attained the status of a financially successful concern. The theory that the total amount by which the carrier's actual income during its early years fails to yield a fair return on the investment should be added as an element of value for rate-making purposes was condemned by the Supreme Court in *Galveston Electric Co.* v. *Galveston*, 258 U. S. 388. By the stronger reason, hypothetical deficiencies must also be rejected.

Howson also testified in a proceeding before the Secretary of Agriculture in which an inquiry was being made into the reasonableness of rates and charges of the Denver stockyards. In reviewing the order of the Secretary the District Court in Colorado sustained the Secretary's action in rejecting Howson's theory. *Denver Union Stock Yard*

Co. v. *United States,* 57 F. (2d) 735. The court in that case said (at p. 743):

> The petitioner introduced the evidence of an engineer who undertook to compute going concern value from a number of assumptions. The engineer assumed that the stockyards was completed, but with no business attached. He then undertook to estimate what it would cost to procure the business which the stockyards now enjoys. The engineer interviewed five men for the purpose of getting their opinion as to the number of years it would take to regain the business. These estimates ranged from 7 to 12 years. The engineer believed that these estimates were too high, and started with the assumption that within five years the business would be attached. Upon these assumptions, he computed the going concern value. This is buttressed by the evidence of certain witnesses that in the past certain expenditures were made for advertising, and by donations of land, which aggregate approximately the same amount. The Supreme Court of the United States in *Galveston Elec. Co.* v. *Galveston,* 258 U. S. 388, at page 395, 42 S. Ct. 351, 354, 66 L. Ed. 678, has said: "The fact that a utility may reach financial success only in time or not at all, is a reason for allowing a liberal return on the money invested in the enterprise; but it does not make past losses an element to be considered in deciding what the base value is and whether the rate is confiscatory."

Howson testified that his method "is an entirely different process from the past deficit" method (R. 324). He said that he did not approve the past deficit method, and that "the Wisconsin deficit theory is an incorrect method" (R. 324). Nevertheless, his method was strikingly similar to the ones he condemned. It is true that he did not use past realized deficits as a basis for determining going concern value, but he did use hypothetical future deficits. He projected himself into the future and theorized upon possible prospective losses under assumed conditions.

Speculative Evidence Is Not Sufficient To Require A Separate Additional Allowance For Going Concern Value

The decisions of this Court do not require an additional perfunctory allowance for going concern value to be inserted in a rate base as a matter of course. Certainly there is no warrant in the decisions for requiring the insertion of a separate allowance for going concern value upon testimony such as Howson's. In *Galveston Electric Company* v. *Galveston,* 258 U. S. 388, this Court upheld a valuation which did not include a separate allowance for going concern value. This Court said (at pp. 394–397):

> The only evidence offered, or relied upon, to support his finding is a capitalization of the net balance of alleged past deficits in

accordance with what was said to be the Wisconsin Rule. * * *

If the rule were that a prescribed rate is to be held confiscatory in case net earnings are not sufficient to yield 8 per cent on the amount prudently invested in the business, there might be propriety in counting as part of the investment such amount, if any, as was necessarily expended at the start in overcoming initial difficulties incident to operation and in securing patronage. But no evidence of any such expenditure was introduced; and the claim of the company does not proceed upon that basis. What was presented by the witnesses are studies, on various theories, of what past deficiencies in net income would aggregate, if 4 per cent were allowed as a depreciation annuity and 8 per cent compound interest were charged annually on the value of the property used.

* * * * *

The fact that a utility may reach financial success only in time or not at all, is a reason for allowing a liberal return on the money invested in the enterprise; but it does not make past losses an element to be considered in deciding what the base value is and whether the rate is confiscatory. A company which has failed to secure from year to year sufficient earnings to keep the investment unimpaired and to pay a fair return, whether its failure was the result of imprudence in engaging in the enterprise, or of

> errors in management, or of omission to exact proper prices for its output, cannot erect out of past deficits a legal basis for holding confiscatory for the future, rates which would, on the basis of present reproduction value, otherwise be compensatory. *Knoxville* v. *Knoxville Water Co.*, 212 U. S. 1, 14. * * *
>
> * * * Going concern value and development cost, in the sense in which the master used these terms, are not to be included in the base value for the purpose of determining whether a rate is confiscatory.

Howson's method is obviously more hypothetical and unreal than that condemned in the *Galveston* case. His method, moreover, has points of similarity to that described and criticized by this Court in *Los Angeles Gas & Electric Corp.* v. *Railroad Commission*, 289 U. S. 287, in which this Court said (at pp. 318–319):

> The other witness, Mr. Miller, took Mr. Luick's construction program, in which the latter had figured the cost of reproduction, and had assumed that there would be turned over to the operating department "one-twentieth of the service mains during each quarter of the second to sixth years, inclusive." Estimating year by year the cost of securing the business during the construction period, the witness took the difference between 8 per cent interest on the property used and useful during the year and the net earnings estimated to have been received,

> and the total of these differences with interest, during the period assumed to be required, was taken to represent the cost of securing the present business of the Company. This was thus calculated to amount, from the second through the seventh year, inclusive, to $8,721,878. To this sum the witness added as the estimated cost "of organizing property and personnel", $506,789, thus reaching the total of $9,228,667, which the Company claims as going value. It is unnecessary to analyze the testimony of these witnesses, as it is obviously too conjectural to justify us in treating the failure to include their estimates as a sufficient basis for a finding of confiscation.

In *Georgia Railway & Power Company* v. *R. R. Commission,* 262 U. S. 625, this Court had under consideration, among other things, the refusal of the Railroad Commission to include in the base valuation an item of $1,000,000 representing "losses from operations during recent years." In holding that the item was properly excluded, the Court said (at p. 632):

> That past losses are not to be capitalized as property on which the fair return is based was held in *Knoxville* v. *Knoxville Water Co.,* 212 U. S. 1, 14; *Galveston Electric Co.* v. *Galveston,* 258 U. S. 388.

This Court in recent decisions has reaffirmed the decision in the *Galveston* case with respect to the inclusion of past deficits as a part of the rate base.

Los Angeles Gas & Electric Corp. v. *Railroad Commission,* 289 U. S. 287, 313; *Columbus Gas & Fuel Co.* v. *Public Utilities Commission of Ohio,* 292 U. S. 398. In the latter case the lower court and the Commission had made no separate allowance for going concern value. With respect to the company's claim that such an allowance should have been made, this Court said (at p. 412):

> Thus, some of the appellant's experts have included interest or return unearned during the business development period as a factor contributing to going value, one witness placing this factor as high as $6,300,000. Their method of computation was condemned by this Court in *Galveston Elec. Co.* v. *Galveston,* 258 U. S. 388, 394, in very similar conditions.

If past actual losses are not to be used to measure going concern value, there is even less reason to use hypothetical losses for that purpose. Plainly the Secretary was not bound to make a separate allowance for going concern value upon the basis of Howson's testimony. There is no evidence in the record requiring a separate allowance and the Secretary was patently justified in not padding the rate base with an additional allowance, unless, as a matter of law, a separate allowance is required.

The Decided Cases Clearly Establish That No Separate Additional Allowance For Going Concern Value is Required Per Se

In *Cedar Rapids Gas Company* v. *Cedar Rapids*, 223 U. S. 655, this Court upheld an ordinance fixing gas rates in which no separate allowance had been made for going concern value, saying that the lower court "expressly took into account the fact that the plant was in successful operation."

In *Des Moines Gas Co.* v. *Des Moines*, 238 U. S. 153, the company sought to enjoin the enforcement of a municipal ordinance fixing gas rates. It was contended that the rates were confiscatory. The master appointed by the District Court, after finding the physical value of the property and allowing 15% for overheads, determined a value of $300,000 for the item of going concern. After consideration of the *Cedar Rapids* case he decided to disallow the item of $300,000 for going concern value. In sustaining the master's finding, this Court said (at p. 171):

> While there is a difference between court and counsel as to what the Master meant by this, we think it is apparent that he meant to say that, applying the rule of the *Cedar Rapids Case*, he had already valued the property in the estimate of what he called its physical value, upon the basis of a plant in actual and successful operation; for he said that otherwise its value would be much less.

> As pointed out in the *Cedar Rapids Case*, if return is to be regarded beyond that compensation which a public service corporation is entitled to earn upon the fair value of its property, the right to regulate is of no moment, and income to which the corporation is not entitled would become the basis of valuation in determining the rights of the public. When, as here, a long established and successful plant of this character is valued for rate-making purposes, and the value of the property fixed as the Master certifies upon the basis of a plant in successful operation, and overhead charges have been allowed for the items and in the sums already stated, it cannot be said, in view of the facts in this case, that the element of going value has not been given the consideration it deserves and the appellant's contention in this behalf is not sustained.

Among the overheads included in the physical value by the master in the *Des Moines* case were legal expenses, engineers' fees, compensation insurance, contingencies, costs of administration, and interest and taxes during construction. In referring to the cost of establishing the business the Court said (at p. 166):

> For aught that appears in this record, these expenses may have been already compensated in rates charged and collected under former ordinances. As we have said, every presumption is in favor of the legitimate exercise of the rate-making power, and it is not to be presumed, without proof, that a

> Company is under the necessity of making up losses and expenditures incidental to the experimental stage of its business.

In recent decisions this Court has applied the same principles. In *Los Angeles Gas & Electric Corp.* v. *Railroad Commission,* 289 U. S. 287, the company attempted to have rates fixed by the Commission set aside. The company claimed a separate allowance of $9,200,000 for going-concern value. Witnesses for the company had calculated that from $9,000,000 to $16,000,000 was necessary for that item. The Commission disallowed this claim, but in fixing a final value it gave consideration to the fact that the plant was a going concern. In affirming the decision of the lower court dismissing the bill, this Court said (at pp. 313–315):

> The concept of going value is not to be used to escape the just exercise of the regulatory power in fixing rates, and, on the other hand, that authority is not entitled to treat a living organism as nothing more than bare bones.
>
> The principle as thus recognized and limited is obviously difficult of application. *Cedar Rapids Gas Co.* v. *Cedar Rapids, supra.* It does not give license to mere speculation; it calls for consideration of the history and circumstances of the particular enterprise, and attempts at precise definition have been avoided. It is necessary again, in this relation, to distinguish between the legislative and judicial functions. It is the appropriate task of the Commission to deter-

> mine the value of the property affected by the rates it fixes, as that of an integrated, operating enterprise, and it is the function of the Court in deciding whether rates are confiscatory not to lay down a formula, much less to prescribe an arbitrary allowance, but to examine the result of the legislative action in order to determine whether its total effect is to deny to the owner of the property a fair return for its use.

This Court then reviewed its prior decisions involving going concern value, and continued (at pp. 315–316):

> In the light of these decisions, our inquiry must be, *first,* as to the actual scope and effect of the legislative determination in relation to the value of the property as that of an integrated and established enterprise, and, *second,* whether the evidence requires the conclusion that by reason of the inadequacy of the valuation the result is confiscation. As to the first question, it is urged that the Commission declined to allow any amount for going value. It is true that the Commission, refusing to admit the assumptions underlying the Company's claim for the amount of $9,228,667 as going value, stated that it did allow "for the so-called intangible going concern value by treating its cost as a current operating expense." But we cannot fail to give effect to the fact that the Commission, determining its rate base at $65,500,000 for 1930, on the basis of fair value, stated that (apart from deduction for accrued de-

> preciation) this amount was "the fair value of the property here involved as a going property with business attached, giving full effect to the current level of prices and allowing for any intangible elements of value not fully cared for in the usual and current operating expense."

This Court then analyzed the valuation of the physical property and concluded that there was a substantial margin in the valuation, saying (at p. 317):

> The fact that this margin in the rate base was not described as going value is unimportant, if the rate base was in fact large enough to embrace that element.

In *Dayton Power & Light Co.* v. *Public Utilities Commission of Ohio,* 292 U. S. 290, the company challenged rates prescribed by the Commission for natural gas. The company claimed a separate allowance of from $125,000 to $140,000 as a separate amount for going concern value. The Commission rejected the separate allowance and its action was upheld by the Supreme Court of Ohio, and, on appeal, by this Court, which said (p. 309):

> Going value is not something to be read into every balance sheet as a perfunctory addition. * * * Here the company was a small one and its organization simple. There was no diversified and complex business with ramifying subdivisions. We cannot in fairness say that after valuing the

> assets upon the basis of a plant in successful operation, there was left an element of going value to be added to the total. Even if the addition might have been made without departure from accepted principles, the omission to make it does not appear to have been so unreasonable or arbitrary as to overleap discretion and reach the zone of confiscation. * * * Much that the framers of a schedule are at liberty to do, this court in the exercise of its supervisory jurisdiction may not require them to do. For the legislative process, at least equally with the judicial, there is an indeterminate penumbra within which choice is uncontrolled.

The above decision was followed within a month by *Columbus Gas & Fuel Co.* v. *Public Utilities Commission of Ohio,* 292 U. S. 398, in which this Court said (at p. 411):

> Objection is made also as to the disallowance of a going value for the affiliated companies. Going value was excluded both by court and by Commission as an item of property to be separately appraised and separately reported. The record justifies a holding that it was reflected in the other items and particularly in the appraisal of the physical assets as part of an assembled whole. Cf. *Hardin-Wyandot Lighting Co.* v. *Public Utilities Comm'n.,* 118 Ohio St. 592, 603; 162 N. E. 262. This, we think, was adequate.

This Court then discussed the estimates of going concern value prepared by different experts in behalf of the appellant, concluding (at p. 413):

> We cannot find that the Commission and the court went beyond the bounds of a legitimate discretion in putting aside these estimates as too uncertain to be followed.

It is, therefore, well established by this Court that rate regulatory bodies are not required by mere speculative and theoretical evidence to make separate allowances in rate bases for going concern value. If property has been valued on the basis of a plant in successful operation, no separate allowance need be made as a matter of course over and above value reflected in the physical assets, unless the evidence clearly shows some peculiar reason requiring an additional allowance. As already demonstrated, the evidence in the present case does not show any reason requiring a separate allowance for going concern value here.

The Secretary's Total Valuation Amply Allows for the Element of Going Concern Value

The Secretary's valuation, however, amply allows for the element of going concern value, and refusal to make a separate allowance therefor on the basis of Howson's testimony does not mean that the Secretary valued the property as "bare bones." Indeed, the valuation adopted is the value of a plant in successful operation, a "living

organism", and it includes overheads sufficient to permit full restoration of the used and useful property. The record squarely refutes appellant's contention that the valuation adopted was a "bare bones" value.

The Secretary found that $1,537,953 was the reproduction cost less depreciation of appellant's used and useful structures (R. 104). To this amount he added $358,520 which was the depreciated value of the overheads (R. 105), resulting in a cost of reproduction new less depreciation of $1,896,473 including overheads. Additions and betterments brought this up to $2,039,616 (R. 106). These overheads include omissions and contingencies, general salaries, legal expenses, engineers' and architects' fees, fire and tornado insurance, workmen's compensation and public liability insurance, taxes during construction, and interest during construction including interest on land (R. 99–100). Similar items, when added to the cost of labor and materials, were considered in the *Des Moines* case by the master as giving recognition to the going concern element, and this Court thought them sufficient.

The allowance of these items is sufficient to permit reconstruction of the entire used and useful plant of appellant and to put it in readiness to render service. In determining its reproduction cost new less depreciation the Secretary envisioned an assembled plant, complete in every respect, as it

was at the time of the hearing. The testimony of Henrici, the Government's valuation engineer, is significant in this connection. He said (R. 439):

> I stated that I made no separate and distinct allowance in my appraisal for going concern value. It is possible that an article of property could have a cost which might be either greater or less than its value. Cost and value are not necessarily synonyms. In my appraisal I was technically seeking to obtain costs. My figures attempt to set up my opinion of the value of reproduction cost of property and the reproduction cost less depreciation. I do not attempt to set up market value for the property. Values are established by me on the basis of market value of the materials and labor, but that is not the market value of the property. It is the cost of reproducing and the cost of reproducing less depreciation. I valued the property as I found it, and, of course, the property is mostly used in connection with a going business. Assuming that the St. Joseph Stock Yards had ceased to do business, had no business in prospect, ceased to be a going concern, the pens, fences, paving, and matters of that kind would have little or no value, market value depending partially on income. If someone undertook to reproduce the St. Joseph Stock Yards in a desert where there were no railroads, no roads, no livestock, and no business, that would tend to increase the cost due to lack of labor supply.

It is clear that Henrici regarded his valuation as embodying the element of going concern value.

Quite apart, however, from the fact that the structural property was valued as part of a living organism and not as "bare bones", the very *method of ascertaining value for rate-making purposes* that was used in this proceeding tended to establish a liberal valuation sufficient to recognize and cover the going concern element, even if it had not been covered in the valuation of the specific structures. Thus, the fact is important that the Secretary's method was *reproduction cost* unmodified by considerations of actual or historical cost (R. 106, 113).

Most of appellant's structures were built more than thirty years ago at a time when labor and materials were much cheaper than now (R. 626). These structures for the most part will never have to be replaced *in toto* because they can be maintained in service condition by normal repairs and piecemeal replacements, for which adequate allowance has been separately made. Thus in ascertaining value the Secretary has adopted a method which allows a substantial increment over and above actual cost. He has taken reproduction cost less observed depreciation, as a measure of value, without undertaking to weigh in the balance other factors legally recognizable which would undoubtedly have tended to diminish the value found.

It cannot seriously be contended on the record in this case that the use of reproduction cost less

observed depreciation as a *sole* measure of value is not liberal *per se,* and that the exclusive use of this method does not in and of itself include a margin that is in fact large enough to embrace the going concern element.*

The financial history of the company also demonstrates that the use of reproduction cost as a measure of value is *per se* liberal. The record does not disclose the financial history of appellant prior to 1916, and it is not known to what extent the book

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* It would seem, moreover, that the fact that a property is a going concern is one of the principal reasons for using reproduction cost as a measure of value, and that use of reproduction cost may, in itself, largely cover the going concern element. If a property were not a going concern would cost of reproduction be a reasonable measure of value, or would not value have to be measured by some other method? It has been suggested that "it is the going concern element that transmutes cost of reproduction new into value" (R. 112). This was also indicated by appellant's witness Howson when he said (R. 860):

"As to what element or attribute of property converts cost of reproduction new into value, I believe that cost of reproduction new less accrued depreciation is the best index of value, in all cases where the property is serving a useful need to the community, has developed that service fully and is performing it so satisfactorily that it is better than that same service could be supplied by others and at a cost, and I think character of service which insures the continuity of it for the future. Under those conditions, I believe that the cost of reproduction new less accrued depreciation is the best indication of value."

Howson said that a property which is losing money "with no prospects of ever getting beyond that stage" would have a "negative" going concern value, and its physical property "would have a junk value, which would be less than its cost of reproduction." Such property, he thought, "would be worth less than the physical cost of reproduction" (R. 858).

value of the property of that date represented the actual cost. However, the record shows the financial history of appellant since 1916, and it reveals that in 1923 appellant set up on its books an item for "Appreciation of Assets" amounting to $1,362,485.84 (Gov. Ex. 121A, p. 7). This appreciation in assets was based upon an appraisal made by the American Appraisal Company in 1922. This fact further indicates that if the Secretary had given consideration to the element of original cost, such consideration would have had a tendency to produce a lower fair value than that actually found.

A further margin of liberality was shown in the finding of fair rate of return. In arriving at the maximum rates prescribed as reasonable the Secretary employed a seven percent rate of return as a rate factor. He might, however, have employed a rate of return as low as six and one-half percent and still have based his findings on substantial evidence. The economist who testified on rate of return was of the opinion that if the six year period from 1927 to 1932, inclusive, were considered, a reasonable rate of return would be between six and one-half percent and seven and one-half percent (R. 114). Later it will be shown that if the prescribed rates had been applied on the basis of the Secretary's findings during the six year period 1927 to 1932, inclusive, the average annual net operating income of appellant would have been considerably more than $50,000 in excess of that found by the Secretary to constitute a fair return. If

$50,000 is capitalized at seven percent it results in the equivalent of over $700,000 additional value.

It is submitted that the Secretary in his finding of fair value gave full consideration to the element of the going concern value of appellant's used and useful property, and that his refusal to add a separate allowance to the rate base for going concern value does not render his order confiscatory.

II. The Maximum Rates Prescribed by the Order of the Secretary Are Sufficient to Yield a Fair Return on the Fair Value of Appellant's Used and Useful Property

A. The amount allowed by the Secretary from gross revenues to cover repairs and a reserve for depreciation is more than sufficient for appellant's needs

(Appellant's Brief, Point XIV, p. 134)

The Secretary found that $80,000 was an adequate amount to be charged by appellant as a current annual operating charge both to cover repairs and to provide for a depreciation reserve (R. 117–119). This figure was made up by estimating that approximately $38,500 annually would be needed for repairs, leaving the balance to be covered into the depreciation reserve. Appellant objects to the allowance of only $80,000 on the ground that not less than $100,000 annually is required for depreciation reserve alone in addition to the amounts needed for current repairs

In *Clark's Ferry Bridge Co.* v. *Public Service Commission of Pennsylvania,* 291 U. S. 227, this Court has said (at p. 240):

> The question of the amount which should be allowed annually for depreciation is a question of fact. *Georgia Railway and Power Co.* v. *Railroad Commission*, 262 U. S. 625 at 633.

Again, speaking of annual charges to depreciation reserve in *Smith* v. *Illinois Bell Telephone Co.*, 282 U. S. 133, this Court has said (at p. 158):

> It is evident that past experience is an indication of the Company's requirements for the future.

And in *Lindheimer* v. *Illinois Bell Telephone Co.*, 292 U. S. 151, this Court said (pp. 169–170):

> Confiscation being the issue, the Company has the burden of making a convincing showing that the amounts it has charged to operating expenses for depreciation have not been excessive. That burden is not sustained by proof that its general accounting systen has been correct. The calculations are mathematical but the predictions underlying them are essentially matters of opinion. They proceed from studies of the "behavior of large groups" of items. These studies are beset with a host of perplexing problems. Their determination involves the examination of many variable elements, and opportunities for excessive allowances, even under a correct system of accounting, are always present. The necessity of checking the results is not questioned. The predictions must meet the controlling test of experience.

That portion of the Secretary's order which deals with repairs and depreciation (R. 117–119)

indicates that it was based upon a study of the past experience of the company. In considering appellant's actual experience, the Secretary had before him the history of the repair account, the depreciation reserve account, the charges made for retirements over many years, and the surplus account.

While appellant maintained separate accounts for repairs on the one hand and depreciation reserve on the other, the record does not indicate that any definite line of demarcation was observed by appellant in making charges against the repair account as distinguished from the depreciation reserve account. For example, the roof of the hog yards was replaced at a cost of $4,445.93, and the roof of the sheep shed was replaced at a cost of $3,232.43 (Gov. Ex. 121A, pp. 254, 4). These costs were charged to current repairs on the books of the company, although it would seem that they should have been charged against the depreciation reserve in the light of the testimony of the accountants for both parties to the effect that renewals or replacements of property should be charged to the depreciation reserve account (R. 361–362, 446). At the first hearing, appellant's consulting accountant said that "it is possible that we might classify the item as a repair and yet it would have a considerable life period" (R. 362). A study of the company's annual expenditures for repairs and maintenance discloses that they include many replacements. It was this fact which led the Secretary to make one allowance to cover both mainte-

nance and depreciation reserve. Thus was eliminated the necessity of having to determine exactly whether each item constituted a repair or a replacement.

The Secretary's estimate of the amount annually needed for repairs and replacements was based first of all upon a study of the actual amounts expended over a long period of years by appellant and charged to the repair account. The figures are as follows:

Year	Total	Year	Total
1918	$40,484.37	1927	$39,000.48
1919	72,131.89	1928	45,679.60
1920	52,820.69	1929	43,516.51
1921	29,172.07	1930	29,500.12
1922	38,560.57	1931	24,905.34
1923	48,350.88	1932	19,793.79
1924	47,072.47		
1925	42,391.99	Total	629,066.81
1926	55,686.04	Yearly average	41,937.78

The above table includes repairs on property found not to be used and useful for the period under consideration amounting to slightly over $50,000, or an average of approximately $4,700 per year. Subtract $4,700 from the yearly average shown in the table and the result is an annual expenditure of approximately $37,500 for repairs on used and useful property (Gov. Ex. 121A, pp. 338–342). There are also included in these repairs certain items of expense for replacements, such as replacement of the roof on the hog yards and the sheep shed previously discussed. So, based upon the actual experience of appellant, the sum of $38,-

500 (found by the Secretary to be approximately the average amount needed annually for repairs) is clearly sufficient.

Taking up retirements, the history of the depreciation reserve and of the surplus account shows the actual amount of loss which has been sustained because of retirements since 1915, although deductions for retirements shown on the books do not in all cases represent actual loss because they represent gross and not net retirements. Some of the properties retired were sold or traded for new and similar assets, so that the net retirements would not be as great as is indicated. The history of the depreciation reserve account is summarized as follows:

Year	Provided by expense allowance	Provided by surplus adjustment	Total provided	Deductions for retirements	Accumulated balance
1915	$40,067.44		$40,067.44	[1] $10,354.26	$29,713.18
1916	42,825.88		42,825.88		72,539.06
1917	39,276.65		39,276.65		111,815.71
1918	46,902.18		46,902.18		158,717.89
1919	56,335.10		56,335.10	504.79	214,548.20
1920	58,965.74		58,965.74		273,513.94
1921	59,161.24		59,161.24	2,072.50	330,602.68
1922	59,345.07	$231,223.52	290,568.59		621,171.27
1923	120,418.78		120,418.78		741,590.05
1924	124,242.01		124,242.01	735.41	865,096.65
1925	127,487.71		127,487.71	2,213.67	990,370.69
1926	128,066.38		128,066.38	3,104.87	1,115,332.20
1927	127,829.16		127,829.16	11,794.11	1,231,367.25
1928	127,914.24		127,914.24	24,288.04	1,334,893.45
1929	130,185.00		130,185.00	37,511.02	1,427,567.43
1930	121,647.36		121,647.36	15,274.18	1,533,940.61
1931	123,066.12		123,066.12	1,863.13	1,655,143.60
1932	122,509.92		122,509.92	6,589.88	1,771,063.64
	1,656,245.98	231,223.52	1,887,469.50	116,405.86	
Dec. 31, 1932, balance					[2] 1,771,063.64

[1] Equipment 1916–22 retired.

[2] Table compiled from Government exhibit 124, p. 15, except September, October, November, and December 1932, taken from Government exhibits 121–B and C.

The net accumulated balance in the depreciation reserve account of $1,771,063 or approximately 65% of the total constitutional fair value of the property results from the fact that charges of only $116,405.86 were made against that account during the 18-year period, whereas appellant credited to that account $1,887,469.50, leaving a net accumulated balance of $1,771,063.64. Appellant began to set up and accumulate a depreciation allowance in 1915 on a plant which had been constructed in the late 1890's. As far as could be ascertained, no provision was made for depreciation reserve prior to 1915.* The above table shows that from 1915 to 1922 the allowance set aside for the depreciation reserve annually ranged from approximately $40,000 to approximately $60,000. As the result of an appraisal made by the American Appraisal Company in 1922, however, there was set up on the books of the company a reproduction new value on which depreciation was estimated by the engineers to be $621,171.27 (Gov. Ex. 121A, p. 382). Apparently, in order to build up the depreciation reserve to offset this estimated accrued depreciation, a transfer of $231,223.52 was

*Therefore, appellant's argument that certain "items of property which had *actualy reached the end of their service lives and been retired*" had an inadequate amount provided against them in the depreciation reserve (Br. p. 154) is without merit because appellant had set up no depreciation reserve prior to 1915, even though the assets were rendering service prior to that date.

made from the surplus account to the depreciation reserve account. Thereafter appellant increased the amount set aside annually for depreciation reserve. Since 1922 the amount set aside has ranged from approximately $120,000 to approximately $130,000 each year. The result was, as already noted, there had accumulated by 1932 a depreciation reserve of $1,771,063.64, although since 1915 there had been deducted for retirements only $116,405.86.

The Actual Depreciation Observed by All the Engineers Discloses the Exorbitance of the Amount Appellant Has Carried into Depreciation Reserve

While it is not expected that the accrued balance in the depreciation reserve account will be exactly offset by the amount of accrued depreciation in the property, it may be expected that the two amounts will bear some reasonable relation to each other. In *Clark's Ferry Bridge Co.* v. *Public Service Commission of Pennsylvania,* 291 U. S. 227, this Court commented on the disparity between the Company's estimate of accrued depreciation and the annual allowance asked for a depreciation reserve.

In this case an equally significant disparity exists between appellant's estimate of accrued depreciation and the allowance asked for a depreciation reserve. There was an appraisal of appellant's property made by the American Appraisal Com-

pany which was set up on appellant's books as of December 31, 1922. Three appraisals were later made by the Government engineer, one in 1927, another in 1929, and a third in 1932. Two appraisals were also made by appellant's engineer, one in 1929, and a second in 1932. The following table gives a comparison of the reproduction new values of appellant's depreciable property and depreciation estimated by the engineers, the condition percent of the depreciable property as reflected by the different appraisals, and the value and depreciation carried on appellant's books on several different dates (showing the condition percent that would be indicated if the depreciation carried on the books were to be regarded as a criterion of actual depreciation):

		Total value	Depreciation	Condition
May 31, 1916	Books, value of land, buildings, and improvements, combined. (Gov. Ex. 121-A, p. 384)	$4,261,405.05	None	*Percent* 100
Dec. 31, 1922	Books and American Appraisal Company (Gov. Ex. 121-A, p. 382)	2,695,756.66	$621,171.27	76.96
Jan. 1, 1927	Books (Gov. Ex. 121-A)	2,738,288.98	1,085,332.20	60.37
1927	Henrici appraisal (R. 429)	3,199,764.00	757,135.00	76.34
Dec. 31, 1929	Books (Gov. Ex. 121-A)	2,717,587.11	1,427,667.43	47.47
June 30, 1929	Henrici (R. 429)	3,010,835.00	641,464.00	78.7
Do	Kosters (R. 452)	3,441,902.00	535,907.00	84.43
Aug. 1, 1932	Books (Gov. Ex. 121-B)	2,776,595.92	1,744,908.92	37.16
Do	Henrici (Gov. Ex. 114)	2,811,037.00	648,631.00	76.93
Do	Kosters Stone & Webster (Resp. Ex. 111)	3,066,672.00	337,437.00	89.00

From this table it will be observed that if the amount of depreciation carried on the books were to be taken as a criterion of actual depreciation the percent condition of the property would have been

37.16 in 1932, although the government engineer found it to be 76.93, and appellant's engineer found it to be 89. Appellant's books would indicate depreciation of 62.84 percent, whereas the appellant's engineer found the property had depreciated only 11 percent. The estimates of the government engineer as to the accrued depreciation and percent condition of the property in 1927, 1929, and 1932 do not vary materially. His finding in that respect bears out the testimony of those witnesses who testified that appellant's property is being maintained at a fairly stable condition, through a sound policy of repairs and maintenance. As the amount of depreciation carried on the books increased, the gap between the percent condition indicated by the books and that indicated by the engineers widened. It is even noteworthy that appellant's engineer, Kosters, found less accrued depreciation and a higher percent condition in 1932 than he had found in 1929.

It is recognized that the judgment factor enters into the estimates which were made by the engineers as to the percent condition of appellant's property. It does not seem, however, that the engineers who examined the property during the 10-year period could have been in error all the time to the extent of more than a million dollars. Their estimates of accrued depreciation did not vary at any time by more than $100,000 until 1932, when that observed by appellant's engineers was less by some $300,000 than that observed by the Gov-

ernment's engineer. If appellant's engineer is correct, the reserve for depreciation would seem to be excessive by approximately $1,400,000. If the Government's engineer is correct, the reserve would seem to be excessive by approximately $1,000,000.

Appellant's Experience Demonstrates the Adequacy of the Secretary's Allowance

The facts with respect to the depreciation reserve allowance and requirements relating to the structural property in the pen areas shed further light on this comparison. The property in the pen areas is kept in proper operating condition by ordinary repairs and piecemeal replacements. The reproduction new cost of this part of the property is about one-half of the reproduction cost of the entire property—or approximately $1,500,000. During the period from 1916 to 1932 there was retired from this part of the property for all causes property of the value of about $40,000 (R. 458). The amount set up on the books during this period for depreciation on this portion of the property was about $600,000 (R. 456). The gross value of the retirements for all property, including that not used and useful for the years 1916 to 1932, was $239,550.80 (R. 453). This amount includes retirements for fire losses which were covered by insurance (R. 453). The annual average of retirements for the 17-year period under consideration is slightly over $14,000. This amount does not indicate the actual loss to appellant through retire-

ments because it represents gross retirements. If net losses are the proper measure of needs, then the charges for retirements would be considerably reduced because of offsetting gains from the sale of retired property, property received in trade, etc. If net retirements are to be considered, then during this period we find that there was charged to the depreciation reserve only $116,405.86, *supra,* p. 98. During the same period there was charged to surplus for retirements $54,896.85 (Gov. Ex. 124, p. 18; 121 C, p. 2). Thus, the total net charge to reserve and surplus over this period was $171,302.71, or an annual average of approximately $10,000 for the period from 1915 to 1932. Bearing in mind that appellant's physical property had been in existence approximately twenty years before the time for which depreciation information is now available, it appears that the experience of these eighteen years as to repairs, maintenance, and depreciation affords a reliable guide as to future requirements, and from the foregoing it will be observed that appellant's experience indicates that approximately $47,000 annually has been sufficient to take care of repairs, maintenance, and retirements during the period for which the financial history of appellant is available ($37,000 for repairs and $10,000 for retirements).

The Secretary found that $50,000 would be a sufficient amount to include in annual expenses to cover repairs and provision for depreciation reserve "were it not that the periods of experience

above described have not been sufficient in length to provide adequate tests as to certain structures which by reason of their nature may be expected to last considerably longer than the property in composite; and also were it not that there is deterioration through obsolescence and changed conditions which reasonably is to be expected to occur but which reasonably is unobservable" (R. 118).

The Exchange Building may be taken as an example of such a structure. The life of this building was estimated by the Government engineer at forty years (Gov. Ex. 124, p. 12). It has been in existence since about 1898 (R. 456). No substantial charges against the depreciation reserve have been made on account of this building. On the other hand, a considerable part of the pen area which has been given a life-estimate by the Government engineer of from 15 to 20 years has been replaced during this period, the cost of which has chiefly been reflected in the repair account rather than in the depreciation reserve account. The reproduction cost new of those structures having a life ranging from 35 to 50 years is approximately $1,300,000 (Gov. Ex. 124, pp. 12–14). The Secretary's allowance of $80,000 annually to cover repairs and depreciation is approximately $33,000 in excess of the amount ($47,000) shown to have been required on the basis of appellant's experience. The allowance made by the Secretary is, therefore, more than sufficient to take care

of any charges that may have to be made on account of the retirement or replacement of these long-lived structures.

An allowance to be carried into the depreciation reserve greater than the $80,000 found by the Secretary to be reasonable on account of repairs and depreciation would make it possible for the appellant to pursue a liberal dividend policy at the expense of the ratepayers.*

* On pages 10, 11, and 381 of Exhibit 121A there are reflected significant facts in regard to appellant's financial history and dividend policy. The following table shows from the years 1916 to 1932, inclusive, the amount of capital stock outstanding, the annual dividends, and the percentage of dividends to capital stock:

	Capital stock	Total dividends	Percentage dividends to capital stock (percent)
June 1, 1916 to Dec. 31:			
1916	$2,500,000	$ 150,000	6
1917	2,500,000	150,000	6
1918	2,500,000	187,500	7½
1919	2,500,000	200,000	8
1920	2,500,000	400,000	16
1921	2,500,000	200,000	8
1922	2,500,000	325,000	13
1923	2,500,000	[1] 1,300,000	47
1923	3,750,000	168,750	
1924	3,750,000	225,000	6
1925	3,750,000	375,000	10
1926	3,750,000	225,000	6
1927	3,750,000	412,500	11
1928	3,750,000	487,500	13
1929	3,750,000	412,500	11
1930	3,750,000	487,500	54.67
1930	1,875,000	[2] 1,050,000	
1931	1,875,000	225,000	12
1932	1,875,000	187,500	10
Total	55,625,000	7,168,750	
Average for 1 year	2,927,631	421,691	

[1] Stock dividend.

[2] Liquidating dividend, some of which was provided from the sale of assets.

A stock dividend was paid in 1923. In 1930 a liquidating dividend was paid, some of which was paid from the sale of certain assets.*

On the basis of the foregoing, it is submitted that the Secretary's finding with respect to a reasonable allowance to cover operating expense on account of repairs and depreciation reserve is amply supported by the evidence.

The Cases Support the Government's Position On Depreciation Reserve

The law requires a realistic and practical approach to this problem and does not confine the regulatory authority only to theoretical considerations. When the experience of the utility whose

*A cursory observation of the table in the footnote on p. 106, *supra*, will show that the average percentage of dividends paid on capital stock between the years 1916 and 1923 was in excess of 9%. In the year 1923 a 50% stock dividend was declared, thus increasing the outstanding capital stock to $3,750,000. Assuming that the original stock was paid in full in cash in the amount of $2,500,000, it will be seen that this stock dividend resulted in increasing the capital stock without any additional contribution from the stockholders. Nevertheless, the appellant after 1923 was able to pay handsome dividends on its total capital stock, including the stock for which no cash was contributed by the stockholders. From 1924 to 1929, inclusive, the appellant was able to maintain an average dividend of 9½% on its total outstanding capital stock.

In addition to this large return, the appellant was, in 1930, able to pay a 50% liquidating dividend. It is recognized that a liquidating dividend does not always mean that the

rates are under investigation is available to the rate-making authority that actual experience should be the guide.*

In *Lindheimer* v. *Illinois Bell Telephone Company,* 292 U. S. 151, the annual allowance for depreciation was one of the principal points in issue. In that case the state commission had concluded that the depreciation reserve, amounting at the end of 1922 for the Chicago property to about $26,000,000, had been built up by annual additions which were in excess of the amounts required. In

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company is successful because of the fact that the assets are merely being paid to the owners of the property, or the stockholders. But in this case it should be observed that the liquidating dividend returned in cash to the stockholders an amount equal to the face value of the stock created by the stock dividend in the year 1923, and $625,000 additional. Despite this huge outlay of cash on the part of the appellant, it was able to pay a dividend of 12% in 1931 and a dividend of 10% in 1932. These dividends are hardly representative of a company which is barely able to exist under its present income. Nor is a dividend of 10% in 1932 indicative of a company which is losing money.

It will be seen that the appellant has been able to return to the stockholders in cash more than 75% of their original cash investment in capital stock. In other words, the stockholders who originally paid $2,500,000 for their capital stock have been repaid $1,875,000, but they still own all of the equity in the property.

* The Secretary used the test of experience in the Denver Union Stockyards rate proceeding. In passing upon his findings, the District Court said in *Denver Union Stockyards Company* v. *United States*, 57 F. (2d) 735 (at p. 745):

"In addition to the evidence of the engineers, the Secretary had before him the fact that the cost of retirements and replacements of property during the preceding nine years

subsequent years up to and including 1931 this reserve had been increased to $48,362,000. In considering the necessity for such a large depreciation reserve, this Court considered, in connection therewith, the accrued depreciation as asserted by the Company. Thus this Court said (at pp. 170–171):

> In this instance, the evidence of expert computations of the amounts required for annual allowances does not stand alone. In striking contrast is the proof of the actual condition of the plant as maintained—proof which the Company strongly emphasizes as complete and indisputable in its sharp criticism of the amount of accrued depreciation found by the District Court in valuing

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had averaged $4,371 annually. True, the amount of property that is replaced in one or two years has no bearing on its probable life; but, where the property is of varying ages and nature, an experience of nine years may have some evidentiary value. The Secretary had evidence that much of the property was susceptible of maintenance by minor repairs which were properly charged to expense rather than to capital. It appeared that the petitioner had, for a period of twelve years, set up on its books an average depreciation of about $45,000 a year. The Secretary made an allowance for an annual depreciation charge of $47,000 a year. Considering the fact that the Secretary found that this property, after a great many years of useful life, is still in 83.8 percent condition, and considering the small amounts which had been actually expended thereon for replacements during the past nine years, we are of the opinion that the Secretary's allowance is supported by the evidence."

See also *Union Stockyards Company of Omaha* v. *United States*, 9 F. Supp. 864, 882–883.

the property. The Company insists that "the existing depreciation in the property, physical and functional, does not exceed 9 percent in the years 1923 to 1928 and 8 percent thereafter." The existing depreciation as thus asserted by the Company, and the amounts it shows as the depreciation reserve allocated to the intrastate business in Chicago, (taking in each case the average amounts per year) are as follows:

Years	Existing Depreciation	Depreciation Reserve	Years	Existing Depreciation	Depreciation Reserve
1923	$11,992,000	$26,797,000	1928	$16,241,000	$42,769,000
1924	12,865,000	29,316,000	1929	15,300,000	44,515,000
1925	13,775,000	32,155,000	1930	15,863,000	45,829,000
1926	14,621,000	35,572,000	1931	15,828,000	48,362,000
1927	15,360,000	39,352,000			

In explanation of this large difference, the Company urges that the depreciation reserve in a given year does not purport to measure the actual depreciation at that time; that there is no regularity in the development of depreciation; that it does not proceed in accordance with any fixed rule; that as to a very large part of the property there is no way of predicting the extent to which there will be impairment in a particular year. Many different causes operating differently at different times with respect to different sorts of property produce the ultimate loss against which protection is sought. As the accruals to the depreciation reserve are the result of calculations which are de-

signed evenly to distribute the loss over estimated service life, the accounting reserve will ordinarily be in excess of the actual depreciation. Further, there are the special conditions of a growing plant,—"there are new plant groups in operation on which depreciation is accruing but which are not yet represented, or are but slightly represented, in the retirement losses." Where, as in this instance, there has been a rapid growth, retirements at one point of time will relate for the most part to the smaller preceding plant, while the depreciation reserve account is currently building up to meet the "increased eventual retirement liability" of the enlarged plant.

Giving full weight to these considerations, we are not persuaded that they are adequate to explain the great disparity which the evidence reveals. [Italics supplied.]

This Court then summarized the Company's contentions that the property was virtually in one-hundred percent service condition and that the plant was not functionally deficient in any practical sense. The Company claimed that the weighted average of its percent condition for six years was 91, and that for the years since 1928, the percent condition was 92. This Court concluded that this nearly constant level of percent condition over a period of years necessarily directed attention to the Company's policy in regard to current

maintenance. It was observed that the nine-year charges of the Company to current maintenance and depreciation were as follows:

	Current maintenance	Depreciation	Total
1923	$5,643,623	$4,222,000	$9,865,623
1924	6,043,737	4,470,000	10,513,737
1925	6,563,193	5,048,000	11,611,193
1926	7,714,364	5,757,000	13,481,364
1927	8,849,550	6,335,000	15,184,550
1928	9,941,143	7,009,000	16,950,143
1929	10,671,576	7,436,000	18,107,576
1930	11,372,858	7,865,000	19,237,858
1931	10,842,053	8,133,000	18,975,053

This Court concluded (at pp. 174–175):

> In the light of the evidence as to the expenditures for current maintenance and the proved condition of the property—in the face of the disparity between the actual extent of depreciation, as ascertained according to the comprehensive standards used by the Company's witnesses, and the amount of the depreciation reserve—it cannot be said that the Company has established that the reserve merely represents the consumption of capital in the service rendered. Rather it appears that the depreciation reserve to a large extent represents provision for capital additions, over and above the amount required to cover capital consumption. This excess in the balance of the reserve account has been built up by excessive annual allowances for depreciation charged to operating expenses.
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> * * * * *

> We find this point to be a critical one. The questionable amounts annually charged to operating expenses for depreciation are large enough to destroy any basis for holding that it has been convincingly shown that the reduction in income through the rates in suit would produce confiscation.

In *Los Angeles Gas & Electric Corp.* v. *Railroad Commission of California*, 289 U. S. 287, this Court (at p. 320), in upholding a commission's allowance for annual depreciation, supported its conclusions by reference to the utility's dividend record and the increase in its surplus.

It is submitted that the reasoning of this Court in the *Lindheimer* case and in the *Los Angeles Gas & Electric Corp.* case with respect to the treatment of depreciation reserve is fully applicable to the present case.

Appellant, in addition to making several miscellaneous objections to the allowance for repairs and depreciation which will later be discussed, contends (1) that its property has not existed a sufficient length of time to cause it to reach a period of normal deterioration and that therefore the test of average actual experience in determining annual requirements for repairs and depreciation is not applicable (Br. 155), and (2) that the Secretary has prescribed the sinking-fund compound interest method of ascertaining an allowance for deprecia-

tion reserve and that such method is improper in this case and has been improperly applied (Br. pp. 145–155). There is no merit in either contention.

(1) *Appellant's structural property has reached a period of normal deterioration.*—Although estimates may be made of the composite life of the physical operating property of a plant as a whole, actually a plant in operation never deteriorates to zero because it must constantly be kept, through repairs and replacements of worn out parts, in a condition to render service. This often leads, in the case of well-managed companies, after a number of years of operation, to a state of depreciation that remains about constant. Repairs, and the gradual replacement of parts as they wear out, maintain the property in good service condition. The expense of such maintenance after structural property has passed a certain age, becomes fairly static over a period of years, and necessities for the future can fairly be judged by the expense of the past.

On the other hand, before a property has reached this stage it is necessary to set aside in each year a larger amount in anticipation of future deterioration than the actual deterioration of the property calls for in order that the ultimate burden of replacement may be evenly spread over the life of the property. The record in the instant case clearly demonstrates that appellant's property has reached a normal operating condition—a condition in which

the expense required for repairs and replacements has for some years been, and may in the future be expected to be, fairly static.

Appellant's structural property consists mainly of three classes: (1) brick buildings, such as the Exchange Building; (2) pens, fences, and paving which compose the general pen areas of the stockyards, and (3) underground structures, such as sewers and water pipes (Gov. Ex. 114). The stockyard was built sometime during the 1890's, and has been rendering continuous service since that time (R. 626). A consulting accountant who was called as a witness by appellant in the first hearing testified that—

> In a property of that kind, we find that it shakes down after a period of years to a point of normal condition * * * perhaps at 75 percent condition * * * and that without fluctuating greatly the actual value of the property will drop a little and be restored; * * * but it is hardly fair, in a picture of that kind, to try to compare the situation with a single asset, the value of which is diminished until it reaches the point of zero. * * * You will find property which is nearly 100 percent, a property which is new, but, generally speaking, taking representative plants by and large, probably the figure of 75 percent condition after several years' operation would be rep-

> resentative (R. 354–355). * * * Generally speaking, it is to be expected that after the company has been operating for a period of time it reaches a certain basis of efficiency of operation, and its condition percent from then on remains normal. That is for the reason that current replacements ordinarily take care of current depreciation, and are more or less regular in their occurrence. I have never made any study to determine how long a stockyard would operate in order to reach that basis, but I would say that this particular stockyards has undoubtedly reached such a point. It is my understanding that it has been in operation since 1898 (R. 357).

A consulting engineer who testified for appellant at the second hearing said that appellant's property had "about reached the turn-over stage" and that this applied to the "stockyards' buildings, and improvements, which include the pen areas" (R. 723). He said that "the turn-over stage" is the phrase that:

> I have used a number of times and I have heard it used by other experts testifying on the subject of depreciation, it being the stage of renewals of the property of a composite nature where the renewals may be determined to be practically normal or uniform, and that would be true of pen areas where the service life was assumed for pens them-

selves as rather low and the age of the property was such that a great deal of it had already been renewed, so that we get to the point where renewals of renewals finally goes on to infinity and it reaches a uniform stage as a whole (R. 723).

(2) *The Secretary did not use the compound interest sinking-fund method of ascertaining an allowance for a depreciation reserve, and appellant's arguments directed at such methods are irrelevant.* Appellant asserts that this Court has never authorized or required the imposition of a compound interest sinking-fund basis for an annual depreciation reserve, and that "it must be apparent that the Secretary has here prescribed the sinking-fund compound interest method" (Br. p. 146). In making this argument appellant is laboring under a misapprehension of fact, because the Secretary obviously did not base the allowance for repairs and depreciation upon the compound interest sinking-fund method, as reference to the findings plainly shows (R. 117–119). Appellant's argument that the compound interest sinking-fund method should go only with an undepreciated rate base (Br. p. 147) is, therefore, also inapplicable to the present case. Appellant's argument with reference to the straight line method of computing depreciation implies that the Secretary should have relied solely upon this theoretical method advanced by appellant in spite of what the facts in this case reveal with respect to appellant's financial history and expe-

rience. But as already noted, it was proper for the Secretary to take into account the empirical factors which he did. *Lindheimer* v. *Illinois Bell Telephone Co.*, 292 U. S. 151.

Appellant's contention that the Secretary used the sinking-fund compound interest method is predicated upon a misconstruction of the testimony of Government witness Bachmann. Appellant infers that Bachmann recommended an allowance of $50,000 per year for depreciation reserve based upon the sinking-fund compound interest method (Br. p. 146). The fact is, however, that Bachmann did not recommend the use of a sinking-fund compound interest method. What Bachmann in fact said was (R. 456–457):

> The straight line method, in my opinion, being out of the question for this particular purpose, there appears to be left only the sinking-fund method *or the method of actual retirements plus the actual accrual of depreciation as determined by observation.*

Bachmann then proceeded to discuss the amount which would have to be allowed if the sinking-fund compound interest method were adopted, concluding that the result under this method, based upon Henrici's estimate of service life, would be $50,000 per year. Bachmann, however, said (R. 457–458):

> The allowance which should be made by the Secretary, in my opinion, should be somewhere between the amount determined

on a retirement basis, about $10,000 being the minimum and a sinking-fund basis, $50,000 being the maximum.

Even if the Government witness had recommended the use of the sinking-fund compound interest method, that would not indicate that the Secretary was bound to adopt that method. There can be no doubt, however, on the record in this case that Government witness Bachmann did not recommend the use of the sinking-fund compound interest method.

Appellant contends that the straight-line method should have been used (Br. 147–149), but the testimony amply supports the Secretary's view that such method is inappropriate in view of appellant's experience (R. 454–456), and moreover this conclusion is supported by the *Lindheimer* case.

(3) *Miscellaneous objections raised by appellant.*—Appellant contends that under the Secretary's allowance for depreciation reserve sixty-three years would be required to accumulate a reserve equal to the cost of reproduction new, or more than twice the probable average life of the property as estimated by the engineers (Br. p. 139). But life tables must be qualified in the light of actual experience (R. 454). Indeed, the experience of appellant with respect to actual retirements made during the years 1916–1932 shows that such retirements aggregated $239,550 (R. 452). If retirements in the future were to be made at the same rate which pre-

vailed through this seventeen-year period, it would take approximately twelve similar periods to retire the structural property as a whole, or more than two-hundred years.

Appellant further contends that the Secretary may not require appellant to invest money for the purpose of earning a return to provide an adequate depreciation reserve, and that practical difficulties preclude the investment of such a reserve in interest-bearing securities (Br. p. 152). But this argument likewise is based upon a misapprehension of what the Secretary has done, because the findings clearly are not predicated upon anticipated earnings from investment of the reserve (R. 117–119). Any accumulations from investment of the depreciation reserve funds would simply increase the amount thereof over and above what the Secretary has found to be required for appellant's needs.

It is submitted that the Secretary's determination with respect to a reasonable allowance to be covered into rates for repairs and depreciation is reasonable, and is amply supported by the evidence.

B. THE MAXIMUM RATES AND CHARGES PRESCRIBED BY THE SECRETARY ON LIVESTOCK RESOLD OR REWEIGHED FOR PURPOSE OF SALE ARE BASED UPON CORRECT ESTIMATES OF THE VOLUME OF LIVESTOCK SUBJECT TO SUCH RATES AND CHARGES, AND THE RESULTING ESTIMATE OF THE YIELD FROM SUCH RATES AND CHARGES IS NOT EXCESSIVE

(Appellant's Brief, Point IX, p. 84)

The tariff of rates and charges collected by appellant prior to the Secretary's order included a provision for a yardage charge on livestock *resold in*

the commission division equal to one-half the yardage charges collected on livestock arriving by rail (R. 34–35, 397).

These rates were as follows:

	Cents
Cattle	17½
Calves	12½
Hogs	6
Sheep and goats	4
Horses and mules	17½

The Secretary found that while by the terms of the tariff the collection of the resale yardage charge was limited to resales made *in the commission division,* in actual practice appellant imposed the resale charge on other resales not made in the commission division "if they do not involve livestock 'to go to the country' that is, purchased by farmers to be fed" (R. 35).

Actually the practice of appellant with respect to collecting a resale charge upon livestock resold or reweighed for purpose of sale outside the commission division lacked uniformity. Although the President and General Manager testified that such a charge was imposed on resales taking place outside the commission division (R. 826), it appears from appellant's books that this charge was not always imposed (R. 569).

The Secretary reached the conclusion that to impose a resale charge on resales made in the commission division and not to impose such a charge on resales made in the traders' division or elsewhere in the yard was unreasonable and consti-

tuted unjust discrimination (R. 128). The physical characteristics of the traders' division are substantially the same as those of the commission division and the services rendered by appellant with respect to the livestock warehoused in each division do not differ materially (R. 36). If in addition to the ordinary yardage charge an added resale charge is imposed in one division there is no reason for failing to impose it in the other. In addition to the commission men who customarily take livestock on consignment for sale on a commission basis and who operate in the commission division, there is a class of persons doing business in the stockyards known to the trade as "traders" or "speculators" (and technically classified under the Act as "dealers") whose business principally consists of buying and selling on the stockyards. These traders operate in the so-called traders' division and constantly use the facilities of the stockyards, as do the commission men (R. 35–36). If no resale charge is imposed upon resales made in the traders' division, these traders are not subject to any yardage charge for their use of the facilities of the stockyards.

It is the duty of the Secretary under the Act to prescribe rates and charges which do not burden one class of persons who use the stockyard facilities for the benefit of other persons; the traders no less than other users of the facilities should pay for the services they receive. They occupy a consider-

able portion of appellant's facilities which they use as a place of business (R. 39–41). Unless a yardage charge is collected from these traders the only revenue which appellant receives from them is on such feed as it sells to them. If traders are allowed to use appellant's facilities without payment of the yardage charge, the inevitable effect is that the other patrons of the market necessarily pay in rates and charges an excessive amount in order to permit the appellant to carry the facilities used by the traders. The Secretary's order extending the resale yardage charge to the traders' division, as well as the commission division, is predicated upon the view that a reasonable charge should be imposed upon traders for the services and facilities which they enjoy.

The maximum resale yardage charge which the Secretary's order prescribed for resales in both the traders' and commission divisions followed the same schedule of rates as that previously in effect for the commission division with one minor exception. For cattle, hogs, sheep and goats, horses and mules, the Secretary prescribed the existing rates, namely, 17½¢, 6¢, 4¢, and 17½¢, respectively. The rate for calves which in appellant's existing tariff stood at 12½¢ was reduced by the Secretary to 11¢. The reason for this reduction was that, as above indicated, appellant's existing resale charge was fixed by taking half of the regular yardage charge for each species of livestock arriving by rail.

As shown elsewhere in this brief, *infra,* p. 151, the Secretary found that the most important volume of livestock now handled at the yards arrives by truck and, accordingly, he fixed the resale charge at one-half of the yardage charge on livestock arriving by truck. The yardage charge fixed by the Secretary in his order for calves arriving by truck is 22¢ and one-half of this is 11¢, the amount fixed by the Secretary as the resale charge for calves. It is to be noted that the resales of calves are inconsequential, amounting to not more than approximately 5,000 head in any one year.

Appellant, although apparently not relying greatly upon the proposition, suggests that there may be no lawful authority in the Secretary to impose the resale yardage charge on traders, citing *Denver Union Stockyards Company* v. *United States,* 57 F. (2d) 735 (Br. p. 92). The same question was also involved in *Union Stockyards Company of Omaha* v. *United States,* 9 F. Supp. 864, in which a three-judge district court in Nebraska expressly held that a yardage charge on traders equal to one-half the regular charge exacted from persons purchasing livestock for removal from the stockyards was lawful, notwithstanding a previous practice at the Omaha stockyards of giving traders yardage service free on that livestock resold to go to the country. The court in the *Omaha* case discussed the *Denver* case cited by appellant, and in effect seemed to hold that on this point the *Denver*

case was contrary to the holding of this Court in *Tagg Bros. & Moorhead* v. *United States,* 280 U. S. 420.

In the *Tagg Bros. & Moorhead* case, the petitioners contended that they could not collect permitted increases in commission rates to be charged to traders, or speculators, but the District Court overruled this contention and upheld the power of the Secretary in prescribing rates to take into account increased revenue from such an anticipated charge.* This Court, on appeal, although it did not discuss the particular point, affirmed the decree of the District Court upholding the order of the Secretary (280 U. S. 420).

The principal attack made by appellant upon the Secretary's findings with respect to a resale

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* In discussing this point the District Court said (29 F. (2d) 750, 756):

"The plaintiffs also claim that the audits of the business of the plaintiff, *Tagg Bros. & Moorhead*, and the business of R. M. Laverty, show that those concerns would lose money under the Secretary's rates. As to Tagg Bros. & Moorhead, they would, if the condemned excesses in expenses be continued, *and the increased rates allowed by the Secretary be disregarded.* These increased rates apply only to speculators. It appears that the practice has become established for the plaintiffs to charge a certain class of persons, called speculators or yard traders, half the regular commission which shippers generally have to pay for the same service. The Secretary evidently thinks this discrimination improper, and in his schedule he eliminates it, and authorizes the plaintiffs to charge ~~such~~ traders and speculators the same rate that apply to all others. Both the commission men and the speculators are certain that the whole business of buying for resale on the market will quit, to the detriment of the live-

charge is that the evidence does not support them, particularly in that the Secretary's estimates as to the amount of livestock which would be subject to this charge are excessive and that, therefore, his estimates as to the amount of revenue which will be derived from such charge are excessive. The facts, however, are very simple and easily understood. The Secretary did not undertake to make a prediction as to the exact number of head of livestock which would be received or handled by appellant in the future, but in the light of all of the information in the record he took as a factor in prescribing maximum rates a volume of receipts which appeared to be reasonable. In the case of resales and reweighs his volume factor for each species per year was as follows (R. 126):

Cattle	75,000
Calves	5,000
Hogs	200,000
Sheep	2,500

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stock industry, unless the discriminatory rates are continued; but that is prophecy.

"The court has no function where such forecasts of the future clash. Abstractly, speculation appears to be a feature of all open markets everywhere, and might continue at South Omaha, even without discriminatory commission rates in favor of speculators. But the future, and not the courts, must determine. It follows that the showing of probable loss to Tagg Bros. & Moorhead on the hypothesis of half rates to speculators, instead of full rates, as prescribed by the Secretary, is immaterial." (Italics supplied.)

Even in the *Denver* case cited by appellant there was one judge who thought that the resale charge involved in that case should have been upheld (57 F. (2d) 735, 755).

The findings expressly show the number of head of livestock to which the Secretary found the resale or reweigh charge would have applied had the rates prescribed by the order been in effect in 1931 and 1932 (R. 124). They show that the resale or reweigh charge, if it had been applied as contemplated by the order, would actually have applied to the following number of head of livestock during 1931 and 1932:

Year	Cattle and calves	Hogs	Sheep
1932	76, 560	180, 393	1, 939
1931	91, 730	267, 730	4, 059
Average	84, 154	224, 061	[1] 2, 999

[1] The above figures on the amount of livestock to which the resale charge contained in the order would have been applied if it had been effective in 1931 and 1932 are compiled from Government exhibits 108, pp. 63-65; 121A, p. 60; 121B, p. 7; 121C, p. 14; 122, and 122A.

It is clear that the volume of resales and reweighs used as a rate factor by the Secretary is, as to each species, less than the two-year average of the receipts to which such charge would have applied.*

Appellant, however, contends that some of the livestock entering into the above compilation of resales and reweighs to which the charge would have been applicable in 1931 and 1932 was not, in fact, resold or reweighed for purpose of sale, but

* As for 1932 alone, the amount used as a volume factor is also less than the receipts of cattle and calves to which such charge would have applied, although the actual receipts of hogs and sheep for that year are shown to be slightly less than the volume factor used for those species. However, no one year can be regarded as a conclusive test.

rather was handled by order buyers (Br. pp. 89–90). Appellant thus contends that the revenue anticipated by the Secretary from the charge on resales and reweighs is predicated upon the erroneous assumption that order buyers would pay resale yardage. Appellant contends that by mistakenly including transactions of order buyers in the compilation of resales and reweighs for 1931 and 1932, the Secretary has overestimated the amount of revenue which would be received from this charge.

In order to understand the issue which appellant attempts to raise, the difference between the nature of the transactions handled by order buyers and the transactions handled by traders should be clearly stated. The facts with respect to the characteristics of these two types of business at the stockyards are not open to dispute. The trader purchases livestock on the market, always taking title. He then resells it. In reselling livestock, the trader bargains for a price and his profit is derived from obtaining a higher price than he paid. He does not buy or sell on a commission basis, but he buys and sells for himself (R. 30, 887). Often a trader will receive "orders" in the sense that packers, or others, will notify him that they want certain livestock, but in filling these orders he sells property to which he has title (R. 886–887).

Order buyers, on the other hand, buy *as agents* for packers located at other points. They do not take title to livestock in their own name.

They may buy from commission men or they may buy from traders.

A person may be a trader in some transactions and an order buyer in others. He may carry on a general business buying and selling livestock, and also represent some packer as an order buyer. Some persons are registered with the Secretary of Agriculture as both traders and order buyers (R. 570).

Appellant maintains that the Secretary erred in estimating the income from resale charges which appellant would collect under the prescribed rates, since it is contended the Secretary based his estimate of volume of resales "upon the assumption that *order buyers* would pay a resale yardage under the erroneous idea that they *are not order buyers but are dealers*" (Br. p. 89). In support of this contention appellant quotes some of the testimony of Mr. Symon, a partner of Corrigan & Symon. In this testimony Mr. Symon several times states that he has shipped hogs "on orders" and that he is registered as an order buyer. He does not, however, state (as appellant says) that he is not also registered as a dealer (trader), *and the fact is that he is registered also as a dealer* (R. 570). Mr. Symon's statement that he ships hogs on orders, of course, does not indicate whether such hogs are shipped by him as an order buyer or *on orders received by him as a trader.* The paragraph from Symon's testimony (quoted by appellant at the bottom of page

89 of its brief) does not establish, nor indeed does it even give an inference, that the 148,340 hogs referred to were shipped by him as an order buyer. Moreover, in quoting from Symon's testimony, appellant has omitted (at the point where an omission is indicated just before the last sentence quoted (Br. p. 89)) the important part of Symon's testimony which *proves conclusively* that the 148,340 hogs referred to would be subject to the rates in the Secretary's order for resales or reweighs for purpose of sale, bearing in mind that the prescribed maximum resale charge applies also to livestock "reweighed for purpose of sale" (R. 128). Thus, Symon at that point testified (R. 885–886):

> *These hogs that were shipped out to apply on orders were reweighed. We had to have the weight in order to know the amount of money that our customers would have to pay us.* Our customer has to have that weight and we have no other way of arriving at it. These hogs were just weighed to a number ["number" means the trader]. When these hogs are reweighed *they are reweighed* from Corrigan to a number, the number being a packer to whom they are going (R. 885–886).

Symon also testified "all the hogs that we buy are weighed to Corrigan & Symon and *we take title to them*" (R. 887).

The above testimony shows that Symon's firm had title to the 148,340 hogs in question, that it resold them, and that in so doing they were re-

weighed for purpose of sale. There can, therefore, be no doubt that these hogs would have been subject to the Secretary's prescribed maximum charge for resales and reweighs, and that the Secretary properly estimated the income that would have accrued had the full rates and charges been applied to Symon's transactions.

Appellant further seems to contend that these 148,340 hogs were not resold on the St. Joseph market (Br. p. 90). Of course, whether title technically passed at St. Joseph or not is immaterial, as these hogs were reweighed there for purpose of sale.

Appellant's principal attack on the resale yardage charge is based on this contention that the Secretary erroneously included order-buying transactions. To support this contention appellant relies principally upon Symon's testimony, but the above analysis of his testimony clearly shows that it does not support appellant's contention.

Furthermore, the correctness of the Secretary's figures as to resales and reweighs is conclusively demonstrated by Gov. Ex. 122, which contains an analysis of the volume of livestock actually handled by traders (dealers) as such, and the Secretary's estimate is based primarily upon the figures in this exhibit. The accountant who prepared this exhibit testified specifically that "The figures on Gov. Ex. No. 122 do not represent all the purchases made for the period indicated by all traders and all order

buyers. *They represent only trading accounts.* There were some other purchases made during this period on the St. Joseph Stockyards by order buyers which are not shown on the Exhibit" (R. 442).

Appellant further contends that the actual revenue obtained in 1932 from resales and reweighs is $20,803 less than the amount which the Secretary found to be obtained from the application of the tariff (Br. p. 88). In supporting this argument, appellant refers to a compilation of the number of head of livestock on which the resale yardage charge was actually collected in 1932, and the amount collected thereon (Br. p. 41). Comparison of the volume of livestock shown in this compilation with the volume of livestock shown in Gov. Ex. 122 to which the resale and reweigh yardage charge would have been applied, clearly shows that the compilation on page 41 of appellant's brief does not represent all of the livestock to which the charge is applicable. Appellant's compilation, therefore, is inaccurate or else it merely shows that in 1932 appellant did not actually apply its resale and reweigh charge to all of the transactions to which the charge under the Secretary's prescribed schedule would have been applicable.

It is therefore patent that appellant's whole argument on this point is based upon an application of the prescribed rates to the wrong volume figures.

C. THE MAXIMUM RATES AND CHARGES PRESCRIBED FOR FEEDLOT YARDAGE ARE LAWFUL AND THE SECRETARY'S ESTIMATE OF THE RETURN WHICH WILL BE YIELDED BY SUCH CHARGES IS NOT EXCESSIVE

(Appellant's Brief, Point X, p. 93)

Some of appellant's land is used in connection with the operation of various feedlots (R. 57). Formerly these feedlots were leased to outside parties for a rental, and they were being operated in this manner at the time of the first hearing, and in the findings of the Secretary following the first hearing the feedlots were found to be not used and useful, and their value was excluded from the rate base. (See Appendix to Appellant's Brief, pp. 27–29.) The leases to these feedlots, however, were not renewed, and since 1930 they have been operated under appellant's supervision and control by different persons to whom they have been allocated (R. 404, 817). A substantial portion of these feedlots is physically outside the regular stockyard area (R. 402–403).

Under the present method of operation of these feedlots, appellant imposes a yardage charge for their use. It is a per head charge of 35¢ or 15¢ for cattle (depending upon whether or not sheds and other inclosures are furnished), and 5¢ for hogs and 5¢ for sheep (R. 400).

At the second hearing further evidence was offered by appellant to establish that these feedlots are used and useful in rendering stockyard services, and that their value should be included in the

rate base (R. 58, 818). Witnesses for appellant, while contending that this property was used and useful, called attention to the fact that separate charges are made for the use of the feedlots (R. 817). The Secretary after this hearing found that the feedlots were used and useful (R. 58).

The action of the Secretary in including the value of this property in the rate base, therefore, brought into consideration separate property for the use of which appellant had been charging a separate rate apart from the rates charged for general stockyard services. If the value of this property, separately employed for a special though allied use, were to be treated as part of the rate base, obviously the reasonableness of the special rate charged by appellant for the use of this property would have to be considered. If the value of these feedlots had been excluded (because of findings of non-used-and-useful character) from the rate base, appellant would neither have been charged with income nor credited with expenses arising from their operation. But the inclusion of the value of these feedlots in the rate base, necessarily carried with it inquiry into the reasonableness of special charges in connection therewith. It was the Secretary's duty to see not only that such charges were reasonable, but also that they were non-discriminatory. The users of the feedlots are not entitled to special favors, and the rates charged them must be fair and reasonable in relation to the rates

charged the patrons of appellant's general facilities.

In applying these principles it was necessary carefully to analyze the function of these feedlots and their manner of operation. This was done by the Secretary, and attention will now be called briefly to some of the facts developed.

Livestock destined for the feedlots ordinarily goes through the process of purchase and sale in the stockyards. Such livestock is received in the commission division in due course, and it receives all the services incidental to the initial yarding and handling up to the completion of the sale and the weighing. In connection with such services appellant receives the regular yardage charge just as it does on finished livestock which, after sale, goes to the packing plants for slaughter. The livestock going to the feedlots is usually livestock which has been purchased by professional feeders and which, in their judgment, needs further feeding and finishing before it is sold for slaughter (R. 403).

The market facilities of the stockyards ordinarily function twice in connection with livestock sent to the feedlots—once before the animals are taken to the feedlots and again after they are finished and ready for slaughter (R. 405, 834). The length of time livestock is kept in the feedlots varies considerably, but the average length of time approaches 50 or 60 days. In the case of sheep the

feeding period is "approximately 30 days." Hogs "would average probably 50 days." For cattle "the average would be 50 to 60 days." Some of the cattle are fed for 100 days (R. 827).

Contrasted with livestock using the feedlots, animals brought to the market for immediate sale are seldom held in the pens for more than a day or two (Gov. Ex. 108, p. 66).

The relationship of the regular yardage charge under the existing rates to the feedlot yardage charge collected thereunder is as follows (R. 397, 400):

	Regular yardage	Feed lot yardage
	Cents	*Cents*
Cattle	35	[1] 15 or 35
Hogs	12	5
Sheep	8	5

[1] The 35-cent rate only applies to cattle using special sheds and enclosures.

The Secretary found that the existing rates for feedlot yardage are unjustly discriminatory in that animals held in the feedlots employ the stockyards facilities for a much longer period of time than those consigned to the open market, although the rates for livestock consigned to the open market are much higher than those for livestock held in the feedlots. The Secretary found that it is unreasonable and discriminatory to charge such substantially higher rates for the use of appellant's regular facilities for only a day or two than is charged to patrons of the feedlots for their use for periods ranging from 30 to 100 days (R. 128).

Under the previously existing rates shippers of livestock to market for purpose of immediate sale were compelled to pay a substantial part of the return on the value of the investment in feedlots, although such shippers did not use the feedlot facilities. Lack of a sufficient return from the operation of the feedlots was reflected in a reduced net income for appellant, with the resulting need for higher rates for other services.

Having found that the old tariff was unreasonable and discriminatory, in part on account of the feedlot rates, an analysis was made to determine the value upon which the feedlots should yield a fair return. The area of the land occupied by the various feedlots is set out in Gov. Exs. 107; 107A, p. 1–7. The finding as to the value of the various zones in which the feedlots are located is set out in paragraph 121 of the order (R. 88). Relating the square foot area of the feedlots in each zone to the square foot land value thereof, it is found that the value of the land occupied by the feedlots is $211,660.* The total cost of reproduction new less

* This land value is determined as follows:

Foot Area	Secretary's Value	Total Value	Foot Area	Secretary's Value	Total Value
Zone A, 383,410	0.16	$124,483.36	Zone II, 136,956	0.13	$17,840.28
Zone B, 394,611	0.16		Zone III, 200,640	0.08	16,051.20
Zone C, 78,190	0.10	7,810.00			
Zone E, 444,927	0.10	44,492.70			211,660.54
Zone I, 1,966	0.50	983.00			

The areas in the above table are taken from Gov. Exs. 107 and 107 A. The unit values are taken from paragraph 121 of the Secretary's Order.

depreciation as determined from these exhibits is $157,532,** making the total cost of reproduction new less depreciation of structures, plus the value of the land used for these facilities, $369,192.

In arriving at a determination of what the reasonable charge should be for livestock using the feedlot facilities, the Secretary considered the expenses incident to the use of such facilities. The taxes and insurance properly allocable to the feedlot lands and structures were about $6,336 (Gov. Exs. 121A, 121B, 121C). Many of these structures are substantial in character and a large portion of the land is located within the limits of the city of St. Joseph and must, therefore, carry a higher tax rate than lands located outside the limits. The details upon which the segregation of such taxes and insurance were made will be found on pages 348–375 of Government Exhibit 121A. The repairs for the years 1927 to 1932 applicable to the feedlots averaged $311.55 per year (Gov. Ex. 121A, pp. 277–278). The depreciation allowance on feedlot structures which the Government accountant recom-

** This total value of structures is derived as follows:

Horse and Mule Division, less blacksmith shop	$104,079
Rockhold Feedlot	11,241
McKee Feedlot	554
Dutton Feedlot	3,155
Roundtree Feedlot	12,248
Total	131,277
Overheads	26,255
Total	$157,532

The above values are taken from Henrici's appraisal, Gov. Ex. 114, pp. 1–2, 5–6.

mended was $2,000. Therefore, the total direct carrying expenses of the feedlot properties is $8,647 ($6,366 plus $311.55 plus $2,000).

The value of the lands used as feedlots is $211,660.54, and the value of the structures is $157,532, making a total of $369,192. A return of 7% on this amount is $25,843.

Revenues of $34,490 would yield a return of $25,843 and also cover direct expenses of $8,647.*

The Secretary found that the volume of livestock reasonably to be anticipated annually to use the feedlots was, for cattle, 5,000 head; hogs, 1,200 head; and sheep, 85,000 head (R. 126).

That the Secretary's estimated annual volume of receipts for the feedlots is not unreasonable is manifest from the actual experience of the two and one-half years during which appellant has been collecting a yardage charge from this property. During such period the number of head of livestock handled in the feedlot facilities was as follows (R. 125; Gov. Exs. 121A, p. 121; 121B, p. 9; 121C, p. 24):

	1930 (6 months only)	1931	1932
Cattle	4,086	4,998	2,321
Hogs	357	1,664	1,198
Sheep	39,882	121,901	52,385

* It should be pointed out that no allocation of other overheads has been made in arriving at the amount necessary to carry the feedlots. No administration charges, office expenses, or other general expenses have been considered as incident to the feedlot facilities.

47221—36——10

The rates permitted under the Secretary's order—that is, 60¢ per head for cattle, 38¢ per head for hogs, and 38¢ per head for sheep (R. 128) will produce the following revenue on the normal volume:

Cattle	$3,000
Hogs	456
Sheep	32,300
Total income	35,756
Cost plus fair return	34,490
Excess	1,266

Thus the prescribed rates ought to yield revenues approximately $1,000 per year in excess of the amount necessary to carry the feedlot facilities.

As for the contention that the feedlots are part of the general stockyard operations and that they should not be made to bear a separate charge, it is pertinent to note that approximately only 3% of the livestock using the general facilities of the stockyards ever uses the feedlots (Gov. Ex. 121A, pp. 60, 122–125). In view of this, it was fair and just that those who use them should in a measure at least pay the bill.

Fixing of rates for services by comparison with rates for other services, and the fair balancing of rates for different services so that each is fair in relation to the other is a familiar part of the function of rate regulatory bodies. *Northern Pacific Railway Co.* v. *North Dakota,* 236 U. S. 585.

Appellant, however, attacks the Secretary's treatment of the feedlots upon four separately stated

grounds (Br. p. 96). Each of these contentions will now be answered:

(1) Appellant argues that the findings are insufficient. The Secretary, however, has specifically found that the existing rates are unreasonable and discriminatory, and in this connection has specifically mentioned the feedlots.* The Secretary has made specific findings as to volume handled in the feedlots (R. 124–125), and he has described the facilities and the type of service rendered (R. 57–58).

Appellant contends that the Secretary should have made specific findings of the value of the feedlots and the cost of their maintenance (Br. p. 96). The feedlots are physically located in zones which were valued, and the Secretary made his findings of land value (R. 88). The value of the feedlots can be readily ascertained by a simple arithmetical computation, applying the land unit value per square foot to the feedlot areas, which are all in evidence. This the appellee has done (*supra*, p. 137–138). It seems rather captious to suggest that the findings are inadequate because not setting out all the computations. There was no occasion or necessity to

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* The Secretary specifically found (R. 128):

"Moreover, under the existing schedule shippers of livestock who consign their animals to commission men are charged more by the respondent for the use of its facilities in handling such livestock for a shorter period of time than are those who use that portion of its facilities hereinbefore referred to as feed lots for a much longer period of time. It is found that the schedule of rates and charges now in effect is unreasonable and unjustly discriminatory."

break down this land value and make a separate finding of the feedlot value, when the question was simply one of removing a discrimination the existence of which, on the findings made, is obvious.

As for the necessity of making specific finding of the cost of maintaining the feedlots, again there appears no reason why this was required. Certain overhead expenses, a part of which is properly chargeable against the feedlot business as such, have been included in the general operating expenses (R. 120). It is respectfully submitted that there is no occasion, in connection with the Secretary's treatment of feedlots, requiring this Court "to spell out, to argue, to choose between conflicting inferences", as appellant suggests (Br. p. 97). The Secretary's findings leave perfectly clear what he did and why he did it.

(2) Appellant argues that it did not have a true hearing on the matter of feedlot rates; that it had no notice that an increase in such rates was under consideration (Br. pp. 97–99). In the order reopening the proceeding and giving notice of hearing, dated July 19, 1932, the Secretary gave notice that a "supplemental hearing" was to be held before an examiner at St. Joseph, Missouri, which would be "a general inquiry into the reasonableness and lawfulness of each and every rate and charge, and each and every rule and regulation affecting any rate or charge stated in any and all schedules of rates and charges filed by respondent, and in effect at the time of said hearing, for stock-

yard services rendered by respondent at the St. Joseph Stockyards" (R. 396).

At the time of the first hearing, appellant was leasing the feedlots, and since it was not operating them itself its published tariff did not prescribe a rate for the use of these facilities (R. 397–400; Gov. Ex. 108, pp. 1–6). Subsequently, but before the second hearing, appellant abandoned its policy of leasing the feedlots, undertook their operation itself, and published a separate rate for their use (R. 124, 400; Gov. Ex. 108, p. 9). This rate (along with "each and every [other] rate and charge") collected by appellant was clearly within the scope of the notice given. "The notice given by the Secretary was neither defective nor misleading." *Tagg Bros. & Moorhead* v. *United States,* 280 U. S. 420, 440.

Appellant states that since the Secretary had, in the first order, excluded the value of the feedlots, and at the second hearing a witness for the Government had been of the opinion that they were not used and useful, "it was not assumed" by appellant that feedlots "constituted a part of the investigation" (Br. p. 98). But this hardly squares with the testimony of appellant's president and general manager who, at the second hearing, testified at length as to the need for including the value of the feedlots in the rate base (R. 817–820). The fact that a witness called by the Government opposed such inclusion would, of course, not bind the Sec-

retary, and appellant evidently did not regard the testimony of such witness as final because subsequently it called its president and general manager to urge feedlot inclusion. Inclusion of the value of the feedlots would naturally bring into question the special rates charged for these facilities.

(3) Appellant contends that the evidence does not support the conclusion that the returns from the feedlots are inadequate. It has already been pointed out that the evidence warrants separate treatment of these facilities, and higher rates for their services. Appellant has not proved that there are any special reasons why such lower rates for the feedlots are warranted, and the record does not support any inference that indirect benefits to the general ratepayers justify requiring them to maintain through higher rates feedlots which they do not use.

(4) Appellant maintains that the order of the Secretary is void as a matter of law, contending that where the basis for an adjustment of rates is the removal of a discrimination, appellant should be offered an alternative method to remove the discrimination (Br. 102–104). The cases cited by appellant clearly are inapplicable to the order of the Secretary. They arise under Section 3 of the Interstate Commerce Act (U. S. C. A., Title 49, Sec. 3 (1)), and they hold that a carrier must be permitted to remove a discrimination either by raising one rate or lowering the other. *Skinner & Eddy Corp.* v. *United States*, 249 U. S. 557; *Texas & P.*

R. Co. v. *United States,* 289 U. S. 627. Those cases involved a different type of discrimination than that involved here. In those cases the discrimination arose from giving one competitor an advantage in rates over another, and the purpose in permitting the carrier to choose between raising one rate or lowering the other was to remove the unfair advantage as between competitors. In order to accomplish the result intended in those cases it was essential from the competitors' standpoint that the rates be equalized. Here, however, we are not concerned with discrimination in competition, but merely with the discrimination which arises from causing one group of patrons to maintain, through the payment of higher rates, services or facilities enjoyed by others at non-compensatory rates. The only purpose here in removing the discrimination is to relieve the users of the general stockyard facilities of the financial burden of supporting the feedlots when they do not use them, and the Secretary has done this by the rates prescribed.

So much for appellant's specific objections to the Secretary's treatment of the feedlots. Certainly appellant is not helped in its attempt to justify its present rates for these facilities by the testimony of its president and general manager, who said: "I do not know that I can say exactly as to how we arrived at the schedule of rates for feeding livestock in the feedlots" (R. 836). He further testified: "I made no specific study to see if the feed-

lots yielded a fair return on the value of the facilities so used * * * if I guessed about it I would probably say they do not" (R. 848).

The existing schedule of charges for these services has been set up without any attempt to determine the reasonable needs of the company or the shippers, and appellant is in no position to state that the present schedule represents all that can be collected until it has made a sincere attempt to collect the charges in accordance with the schedule prescribed by the Secretary. *Tegg Bros. & Moorhead* v. *United States,* 29 F. (2d) 750, 756. If there is any doubt concerning the confiscatory character of the rates, the action of the lower court in dismissing the bill, pending an actual application of the rates, should be affirmed. *Des Moines Gas Co.* v. *Des Moines,* 238 U. S. 153, 173.

It is respectfully submitted: (1) That the Secretary has power to predicate a rate schedule upon a basis which will eliminate existing discrimination; (2) that the Secretary was warranted on the record in this case in finding that the existing schedule of feedlot charges was discriminatory; and (3) that the new rate schedule eliminates existing discriminations and in so far as the feedlot charge is concerned it is amply supported by the findings and the evidence.

D. THE RATES AND CHARGES PRESCRIBED BY THE ORDER OF THE SECRETARY ARE MORE THAN SUFFICIENT TO PRODUCE A FAIR AND NON-CONFISCATORY RETURN ON THE CONSTITUTIONAL FAIR VALUE OF APPELLANT'S PROPERTY AS FOUND BY THE SECRETARY

(Appellant's Brief, Points V, VII, and VIII, pp. 46, 69, 74)

In determining the net operating income which appellant will derive from the maximum rates and charges prescribed by the Secretary, and whether or not that income amounts to a constitutionally sufficient return, it is necessary, first, to consider the volume of business reasonably to be anticipated and whether, when the prescribed maximum rates are applied to that volume, they will produce a net return to appellant which will represent a fair return upon the fair value of appellant's used and useful property. The Secretary, after consideration of appellant's business over a test period of six years, made a finding as to the annual volume of receipts of livestock reasonably to be anticipated and also a finding of the volume of the sales of feed reasonably to be anticipated. These findings as to volume of receipts and sales of feed to be used as rate factors in prescribing maximum reasonable rates can be checked by comparison with the actual volume of receipts and sales of feed over the six year period covered by the record. It is also possible to apply the Secretary's rates to the actual volume of business during the six years preceding the hearing. The making of such an application plainly demonstrates that the prescribed maximum rates of the Secretary should not only produce in the future a net return in excess of a

fair return upon the fair value of appellant's property, but, moreover, the prescribed maximum rates would actually have produced such a return if they had been effective in the six-year period covered by the record.

Demonstration of the above facts requires consideration (1) of the fairness of the Secretary's findings of volume reasonably to be anticipated and the adequacy of the prescribed rates as applied to such volume to produce a fair return upon the fair value of appellant's property, and (2) the adequacy of the prescribed rates to have produced a fair return upon the fair value of appellant's property during the six years covered by the record if such rates had in fact been effective during such period. These questions will now be discussed separately.

(1) *The application of the prescribed maximum rates to the volume of business which the Secretary found could reasonably be anticipated each year produces more than a fair return upon the fair volume of appellant's property as found by the Secretary*

In the exercise of his statutory duty to prescribe just, reasonable, and non-discriminatory rates, the Secretary was, of course, bound to prescribe a schedule of maximum reasonable rates after he had determined that the schedule of rates and charges in effect was unreasonable and unjustly discriminatory. That this latter determination was required

is shown not only by the fact that the Secretary found that the existing schedule produces revenues much in excess of those necessary to pay the reasonable expenses of conducting appellant's business and a fair return upon the fair value of its property, but it is also shown by appellant's own compilation of its net operating income for five of the six years in question (Br. p. 55). Such compilation shows that appellant earned during the years 1927 to 1931, inclusive, net returns ranging from $223,461.37 to $339,267.11, or a return ranging from more than 8% to nearly 12½% upon the fair value of appellant's used and useful property as found by the Secretary ($2,743,000).*

In fulfilling his duty under the statute, after determining the value of the rate base, it was necessary to determine the volume of business reasonably to be anticipated each year at appellant's stockyards. It was not intended that the reasonable volume to be used as a rate factor would represent a figure below which the volume would never fall, but rather that such volume should represent a fair normal annual expectancy arrived at on the

*Taking the actual net operating income for each of the six years in question, as shown by appellant at pages 44 and 55 of its brief, and comparing the same with the fair value of the used and useful property found by the Secretary ($2,743,000) and the percentage returns for each year are indicated as follows:

Year	Net operating income	Percentage return	Year	Net operating income	Percentage return
1927	$276,651.95	10.09	1930	$279,029.72	10.17
1928	339,267.11	12.37	1931	223,461.37	8.15
1929	314,127.39	11.45	1932	190,656.21	6.95

basis of past experience. Consideration of the volume reasonably to be expected necessitated observation (1) of the annual volume of livestock of each species using the yard facilities and paying a yardage charge therefor during the test period, and (2) of the amount of feed that is annually sold.

Taking up, first, the volume of livestock of each species using the yarding facilities and paying a yardage charge, it should be noted that yardage revenues are derived from three general sources: (1) from charges assessed for yarding livestock arriving fresh from the country; (2) from charges made for yarding livestock resold or reweighed for purpose of sale; and (3) from yardage charges for the use of the feedlots.

In calculating probable income, the Secretary collected detailed data with respect to actual volume of each species handled at the stockyards. In so doing he considered separately the actual receipts arriving fresh from the country since the beginning of appellant's business history (Gov. Ex. 111). He also considered the actual volume resold and reweighed for purpose of sale, and the actual volume of livestock using the feedlots.

Although giving general consideration to the trend in receipts for more than thirty years, the Secretary gave particular attention to the six-year period from 1927 to 1932, inclusive. With respect to arrivals fresh from the country, the Secretary analyzed actual receipts of each species for a six-year period from 1927 to 1932. The actual receipts

for this six-year period were as follows (Gov. Exs. 121 A, p. 60; 121 B, p. 7; 121 C, p. 14):

	Cattle	Calves	Hogs	Sheep
1932	343,464	77,807	1,148,990	1,210,019
1931	406,946	77,412	1,227,341	1,443,881
1930	435,908	98,831	1,367,410	1,517,708
1929	471,074	92,054	1,541,710	1,460,732
1928	474,352	87,029	1,594,606	1,430,495
1927	511,008	101,579	1,359,683	1,215,028

The above table includes arrivals by both truck and rail.*

The volume used by the Secretary as a rate factor for all species by mode of arrival, follows (R. 126):

	Truck	Rail
Cattle	260,000	140,000
Calves	70,000	15,000
Hogs	1,306,250	68,750
Sheep	300,000	900,000

The above is clearly a reasonable estimate of volume for use as a rate factor, in view of the actual receipts during the six-year period analyzed.

* The breakdown of the above actual receipts as between arrivals by rail and by truck will be found in Government Exhibits 121A, p. 60; 121B, p. 7; 121C, p. 14. The trend of receipts, as shown by these exhibits, reveals unmistakably a shift from rail arrivals to truck arrivals in all species of livestock. This shift has been disclosed in the annual receipts for a number of years without recession. The significance of this lies in the fact that even in years when total receipts for a single species have decreased, there has been an increase in the arrivals by truck, *and the arrivals by truck carry a higher rate under the Secretary's order than arrivals by rail.*

The inherent fairness of the volume factors used by the Secretary is illustrated by the case of cattle. For five of the six years the total of fresh receipts of cattle was above 400,000 head per year.

In only one year—the exceptional depression year 1932—was the total of such receipts below the annual volume used by the Secretary as a rate factor, and it is reasonable to presume that 400,000 head is a fair normal around which the annual receipts of cattle will tend to fluctuate. It is to be noted that the Secretary did not adopt an average of the six-year receipts but instead gave weight to the relatively smaller receipts during the later years of the period as compared with the earlier ones. A similar comparison of the actual receipts of calves, hogs, and sheep with the volume used by the Secretary as a rate factor, respectively, for each species shows the conservative character of the Secretary's volume factors for each species.

The volume of livestock receipts in the past has been sensitive to business conditions. The receipts of cattle increased from a low point in 1914 to a high point in 1918, and then declined to another low point in 1921. There was an increase in receipts during 1922 and 1923, followed for two years by a steady period. Following 1925 and continuing until 1932 there was a decrease in cattle receipts. In the case of calves, receipts increased from 1914 to 1925, with the exception of a slight recession during 1920 and 1921. Subse-

quently there was a gradual decline in volume, with the exception of 1929 and 1930. Hog receipts have shown an even greater fluctuation, the low points occurring at shorter intervals. The receipts move in cycles. The Secretary had before him data showing the number of head of livestock of each species received each year for the 25-year period from 1908 to 1932, inclusive, and from these data he was able to make a comprehensive statistical analysis (Gov. Exs. 108, pp. 11–25; 121A, p. 60; 121B, p. 7; 121C, p. 14; see also graph in Appellant's Brief, p. 77). It is eminently fair to use a six-year test period when the period is so selected as to cover six years having such diverse economic conditions as the years 1927–1932, inclusive. During that period there occurred both the height of the period of prosperity and the depth of the period of depression.

The statistical analysis reveals that not only cyclical fluctuations in receipts are characteristic of appellant's business but that the years immediately preceding the dates of the hearings were years of comparatively low receipts. Past experience as disclosed by the chart reproduced in Appellant's Brief at p. 77 indicates that after several years of such declines there follows normally an upward swing, due to the cyclical trend inherent in the business. *Estimates which give due weight to actual experience during years of comparatively low receipts as the Secretary's estimates do are manifestly fair.*

With respect to livestock resold or reweighed for purpose of sale, and livestock handled in feedlots, the Secretary also had before him figures as to actual volume for a period sufficient to form the basis of an estimate of probable future volume. As for resales and reweighs, the record shows the number of head of each species to which the resale and reweigh charge would have been applicable in 1931 and 1932, *supra,* p. 127. As for the feedlots, the record shows the actual volume of each species using these facilities during the last six months of 1930, and all of 1931 and 1932, *supra,* p. 140. Inasmuch as appellant made a separate attack upon the Secretary's treatment of resales and reweighs, and feedlots, the volume of livestock affected by the rates and charges for these services and facilities has been considered in separate points, *supra,* pp. 120–147. It has already been demonstrated that the Secretary's estimate of volume in connection with these services and facilities is reasonable in the light of the actual receipts for the period considered.

Taking up next the volume of feed sold by appellant, the Secretary found that during the years 1927 to 1932, inclusive, appellant's sales of feed were as follows (R. 127):

	1927	1928	1929	1930	1931	1932
Hay (Cwt.)	92,680	98,307	87,005	76,897	69,792	54,222
Corn (Bu.)	131,503	138,608	123,387	104,822	80,552	56,215
Oats (Bu.)	2,423	2,868	2,565	2,140	2,899	1,219
Bedding (Bale)	18,153	18,776	20,611	15,913	14,990	11,830
Milled and Mis. Feed (Cwt.)	4,228	4,917	4,130	4,479	5,328	7,818

The Secretary then found that "for the purpose of determination of the reasonableness of rates the quantity of feed used as a rate factor is as follows" (R. 127):

Hay	60,000 cwt.
Corn	65,000 bu.
Oats	2,000 bu.
Bedding	14,500 bales
Misc. Feed	5,000 cwt.

Comparison of the quantity of feed used as a rate factor with the actual amounts sold during the six years in question demonstrates that the volume of feed which the Secretary used as a rate factor is, with the minor exception of milled and miscellaneous feed, more conservative than the actual figure for any year of the six-year period except the exceptional depression year 1932.

After determining the volume of livestock receipts and of feed sales reasonably to be anticipated, the Secretary framed a schedule of maximum reasonable rates which would be more than ample to pay operating expenses and yield a fair return upon the fair value of the property, and in so doing the volume rate factors shown above were used. The Secretary has shown precisely in paragraph 208 of the order the result of the application of the prescribed maximum rates to the anticipated volume. He found that revenues would be realized from the various sources of income as follows (R. 129):

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Yardage	$412,775
Profit on Feed	82,800
Loading and Unloading	22,500
Feedlot Operations	35,756
Miscellaneous stockyard operations	68,000
Total	621,831

He also found that the reasonable expenses which would be incurred by appellant in producing this income were as follows (R. 130):

Miscellaneous operating expenses	$302,500
Repairs, depreciation	80,000
Taxes	43,767
Total	426,267

None of these expenses, with the exception of the item for repairs and depreciation, does appellant directly challenge.

Thus the net operating income under the Secretary's prescribed maximum rates as applied to the volume reasonably to be anticipated annually is as follows:

Gross operating income	$621,831
Reasonable operating expenses	426,267
Net operating income	195,564

This net operating income of $195,564 amounts to a return of 7.13% upon the fair value of appellant's used and useful property. This clearly demonstrates that the prescribed rates when applied to the volume reasonably to be anticipated will yield more than a fair rate upon the fair value of appellant's property as found by the Secretary.

Appellant in an endeavor to demonstrate that the maximum rates prescribed in the Secretary's

order would not produce the net operating income found by the Secretary to be reasonable has made certain computations at pages 71–72 of its brief which are erroneous. Due to two innocent mistakes, these computations fail to show all of the income which would be derived from an application of the Secretary's rates. Thus, the only yardage revenue which appellant shows is $375,000 from general yardage revenues and $25,775 by applying the rates to resales and reweighs. The error in this computation arises from the fact that there is an unfortunate typographical error in the printed record as to the volume of hogs reasonably to be expected by truck. The record shows (R. 126) this volume to be 1,206,250 head, whereas the Secretary's original order served on appellant showed 1,306,250 head as the volume factor on hogs received by truck. This typographical error which appears in the printed record was first made in appellant's printed petition filed in the District Court in which appellant reprinted the Secretary's findings and order as "Exhibit A", and in reprinting paragraph 201 of the Secretary's findings in such exhibit the figure 1,206,250 was printed instead of 1,306,250. However, when appellant's printed petition containing the Secretary's findings and order was served upon the Government, it was checked with the original thereof and numerous typographical errors were discovered. Accordingly, on July 10, 1934, the Government filed a "Memorandum As To Certain

Corrections To Be Noted In Exhibit A of Petition" (R. 139–141). In this memorandum it is stated with respect to paragraph 201 that "in the table at the conclusion of the paragraph the figure given for hogs arriving by truck is 1,206,250, whereas it should be 1,306,250" (R. 140). Appellant, no doubt inadvertently, in making its computations at pages 71–72 of its brief, overlooked the memorandum in the record setting forth the correction. This error of 100,000 head makes a difference of $12,000 in the application of the rates (12¢ per head for receipts by truck). Thus the following computations check with the Secretary's application of his rates to the volume reasonably to be anticipated (R. 129):

Full yardage estimated in decision	[1]$375,000
Total resale revenue estimated in decision	[1] 25,775
Error in calculation resulting from typographical error	12,000
Total, as shown in Secretary's order (R. 129)	412,775

There is, moreover, a difference between appellant's calculation of profit on feed which amounts to $78,800 (Br., p. 72), and the Secretary's calcuculation of such profit which amounts to $82,800 (R. 129). This difference is due to the fact that appellant did not include feed annually sold to the Anchor Serum Company which the Secretary did include. The record shows that these sales had been annually recurring during the full six-year period and that they are a regular item of profit in

[1] As shown by Appellant's Brief, p. 71.

appellant's business (Gov. Exs. 121A, pp. 74, 83; 121B, pp. 7, 8; 121C, p. 17). Since this was a recurring item of profit, it was proper to include it in the calculation of appellant's anticipated income.

Appellant's other figures ($22,500 for loading and unloading; $35,756 from feedlot operations; and $68,000 from miscellaneous stockyards operations) check with the calculations of the Secretary as shown in paragraph 208 of the order (R. 129).

(2) The application of the prescribed rates to the business of each year of the five-year period, 1927–1931, inclusive, would have produced far more than a fair return upon the fair value of appellant's property

Not only can the maximum rates prescribed by the Secretary be tested with reference to the volume used as a rate factor in the order, but they can also be tested by applying them to the actual receipts of livestock and sales of feed during the period 1927–1932 inclusive. If the prescribed rates had been applied to the business of five of the six years of this period, 1927–1931, inclusive, they would in fact have yielded an average yearly net operating income of $266,237 or an average yearly excess over a fair return of approximately $74,227. (The year 1932 will be separately discussed, *infra* pp. 164–171.)

This is demonstrated by appellant's own figures for the five-year period, 1927–1931 (Br. p. 55) if

certain necessary adjustments in income and expenses are made which appellant fails to make, These adjustments are as follows:

(a) In making its computations, appellant includes as expenses amounts paid during those years for taxes on property not used and useful and the exclusion of which from the rate base appellant does not, with the exception of the Transit House, now challenge. If correction is made for taxes paid on property not used and useful, as well as for income tax on income from non-stockyard and extraneous sources, appellant's calculation of taxes for the five-year period is approximately $83,402 in excess of the amount at which taxes should be figured for rate purposes for stockyard services (R. 119).

(b) Appellant includes as expenses for each year $102,000 to cover repairs and depreciation, or $22,000 in excess of the amount found by the Secretary to be reasonable. This excess amounts to $110,000 for the five-year period. Furthermore, the Secretary in his order allocates $38,500 for current repairs and maintenance, as distinguished fom depreciation reserve. For five years this current repairs charge would amount to $192,500. As a matter of fact, during the five-year period, appellant actually expended for repairs only $156,096, or $36,404 less than the amount allowed for that purpose by the Secretary.

(c) Appellant annually received in normal course recurring refunds on casualty insurance, which for the five-year period amounted to $31,-816 (Gov. Ex. 121A p. 7, line 8), and which appellant has not included in its calculation either as income or as a decrease in expense.

(d) Based on appellant's experience for the years 1931–1932 there would have been an increase in appellant's revenue for the five-year period of $108,428 if appellant had applied the maximum rates for resales and reweighs permitted by the Secretary's order to all the business permitted by that order (Gov. Exs. 121A, p. 60; 121B, p. 7; 121C, p. 14; 122; 122A).

(e) In estimating the return which would have resulted from the application of the Secretary's rates to feedlot yardage, appellant fails properly to apply those rates. Appellant actually collected during the five-year period in question for feedlot yardage and feedlot rentals only $19,276. If to the business during two years, 1931–1932, there had been applied the higher maximum rates fixed by the Secretary, the income which would have resulted to appellant for the two years, 1931–1932, would have been not the $12,176 actually received, but $71,700, or a yearly average of $35,850. If the feedlot charge fixed by the Secretary had been effective during the whole period of five years, and if we assume that the average number of head to

which the feedlot charge applied during the two years, 1931–1932, may be taken as typical for the five-year period, it would have resulted during the entire period in an aggregate income to appellant of $179,250, or an increase of $159,974 over and above the amounts actually collected.*

In view of these necessary corrections, the items of receipts for the five-year period as calculated by appellant should be increased by an item of $31,816 for casualty insurance refunds, by an item of $108,428 for receipts from resale and reweigh charges,

* This is explained by the following table showing number of head of livestock handled in the feedlots in 1931 and 1932 (R. 125).

	Number of Head	Rate	Amount
1931		*Cents*	
Cattle	4,998	60	$2,999
Hogs	1,644	38	625
Sheep	121,901	38	46,322
1932			
Cattle	2,321	60	1,393
Hogs	1,198	38	455
Sheep	52,385	38	19,906
2-year total if prescribed rates had been applied			$71,700
Average collections per year for 2 years			35,850
5-year collections at same rate			179,250
Less revenues actually received during 5-year period			19,276
Net increase—additional revenues procurable under prescribed rates			$159,974

and by an item of $159,974 for feedlot yardage charges. At the same time, the items of expenses should be decreased by an item of $83,402 for tax adjustment, by an item of $110,000 for excessive charges to repairs and depreciation, and by a further item of $36,404 for charges for current repairs not actually made.

If these three items of excessive expense allowances are added to the three other items of insufficient estimates of receipts, the result is a total of $530,024 which must be added to appellant's estimate of $801,162 as the amount which appellant would have received during the five-year period, had the Secretary's rates been in effect. Instead of producing a total net return to appellant of $801,-162, those returns would accordingly have produced $1,331,186, or an average yearly net return of $266,237, instead of $160,233, as claimed by appellant. An annual net return of $266,237 represents a return of 9.7% on the constitutional fair value of appellant's property.

From the foregoing calculations, the year 1932 has been excluded because it is specially treated in the next section of this brief. If 1932 is included and similar corrections made, the average net return to appellant for the six-year period, 1927–1932, would be approximately $247,698 annually, or a net return of 9%, on the fair value of the property. This will appear from the calculations with reference to 1932 given in the next section of this

brief and which show that if the Secretary's rates had been in effect in that year, appellant would have received a net return of approximately $155,000.

(3) *It is improper to take the single exceptional depression year, 1932, as a basis for estimating the return from the maximum rates prescribed by the Secretary; but the application of those rates even to the business of that year would have produced a non-confiscatory return*

(a) As a Matter of Law It Is Improper to Take a Single Exceptional Year as a Basis for Estimating the Return From Rates

Appellant bases its principal calculations designed to prove the alleged confiscatory character of the prescribed rates upon the experience of one year alone—1932 (Br., pp. 39–46; 69–72). In a business having such marked cyclical trends as appellant's, it is obvious that the experience of one year does not reflect a true picture of normal business conditions at the stockyards unless that one year is so chosen with respect to the business history of many years that it can be shown to be in fact a normal year. Since it is difficult in a business having as many composite rate factors as appellant's to find a year which can be said to be normal in all respects, it is submitted that it is preferable to take as a test period a number of years which include different stages of the business cycle. It is further submitted that on this record the years 1927–1932, inclusive, consti-

tuted such years, and that it would have been unfair and unreasonable to have used as rate factors figures based either upon the high or the low years of such period. Rates based upon the experience of the high year alone would have been unfair to appellant inasmuch as appellant would have been required, in order to have earned a fair return under such rates, to secure business each year equal to that of the best year. Rates based upon the experience of the worst year alone would be equally unfair to the ratepayers since those rates would yield during each year of the cyclical upturn amounts progressively in excess of a fair return on the fair value of appellant's property. As this Court has said in *Knoxville* v. *Knoxville Water Co.*, 212 U. S. 1 (at p. 15):

> We think it was error to confine the investigation to, and base the judgment upon, that year alone. The precise subject of inquiry was, what would be the effect of the ordinance in the future. The operations of the preceding fiscal year, or of any other past fiscal year, were valueless if the year was abnormal, and were only of significance so far as they foretold the future.

In *Denver Union Stock Yard Co.* v. *United States*, 57 F. (2d) 735, a case arising under the same act as the case at bar, the District Court for Colorado, in holding that the Secretary erred in using a single year as a test period (in that case, 1929) said (at p. 753):

> There is ample evidence in the record that a fair estimate of earnings for the future cannot be predicated upon an examination of a single year of the past; that, in estimating earnings for the future, the business world generally studies the earnings for at least a five-year period in the past.
>
> * * * * *
>
> When the complete history of the business of the stockyards for a long period of years is available, we think it was error for the Secretary to predicate his rate upon the experience of a single and abnormally high year.

Obviously, fair rates in a business having fluctuating receipts will yield a higher rate of return in a good year than in a bad year. If such rates, however, are predicated upon a period of years sufficiently great to be representative, they will produce in good years a return in excess of that fair return used as a rate factor, and in bad years they will produce as revenue less than that used as a fair return in prescribing rates.

This Court has recognized that reasonable rates may yield less in years representing the valleys of depression than in prosperous years, and that the return actually yielded by reasonable rates may in bad years reach a percentage level which in good years would be confiscatory. In *Lindheimer* v. *Illinois Bell Telephone Co.*, 292 U. S. 151, the lower court had found that the rates involved in the order therein challenged would have produced returns

varying from 7½% in 1923 to 1927, inclusive, to 5½% in 1932 and this Court upheld that order. In *Dayton Power & Light Co.* v. *Public Utilities Commission of Ohio,* 292 U. S. 290, this Court upheld a rate order upon findings of the Commission that it would yield a yearly net return of 6½%, saying (at p. 290):

> In view of business conditions, of which we take judicial notice * * *, the rate allowed was adequate.

Although as a general principle it is thus improper to test the application of rates by the experience of a single year and the results of such a test would be irrelevant and immaterial, this is true to an obviously greater degree when the year in question happens to be the high or low year of a cycle. Specifically, it is improper to test the adequacy of the rates fixed in the order here challenged by the result of their application to the business of 1932 alone, since 1932 was so obviously an abnormal year, and the results of such a test are irrelevant and immaterial.

(b) Even in the Exceptional Depression Year 1932 the Rates Prescribed by the Secretary Would Have Yielded, if in Effect, a Non-confiscatory Return on the Fair Value of the Property

Nevertheless, the Government is quite willing to meet appellant on its own ground in projecting such a test. The year 1932 was the worst year of the depression period, and the low year of the cycle shown by the record. Yet the application of the pre-

scribed rates to the business of that year reveals that they would have produced in that year a non-confiscatory return, as even in that year, notwithstanding the low point in receipts, the prescribed rates, if they had been in effect, would have produced a net operating income of approximately $155,000, or 5.67% on the fair value of appellant's property as found by the Secretary.

This will appear from pointing out the errors in appellant's calculations.

Thus, appellant attempts to show that, had the Secretary's prescribed maximum rates been in effect in 1932, its net operating income would have been $109,172.91 or 3.9% on a rate base of $2,743,000 (Br. p. 45). Appellant's contention that under the prescribed rates it would only have earned in 1932 a return of over 3.9% is, however, unfounded because based upon computations in which income is understated and expenses overstated in some of the same respects as they were for the five-year period discussed in the preceding section of this brief (*supra*, pp. 159–163).

(1) In computing the income from resale and reweigh yardage charges, appellant has not used the volume figures representing the volume to which the resale and reweigh yardage charges fixed by the Secretary would have applied had the Secretary's order actually been effective in 1932. On the basis of the Secretary's findings the income from resale yardage in 1932 would have been $19,160

greater than that which appellant shows. This appears from the following table which compares the figures in column headed "Revenue Units" in lines 26–29 of the table on page 41 of appellant's brief with the findings in paragraph 196 of the Secretary's order (R. 124):

	Number of head used by appellant	Number of head to which order would have applied	Difference	Rate	Increase
				Cents	
Cattle	18,869	76,560	56,503	17½	$9,791
Calves	1,188			11	
Hogs	25,224	180,393	155,169	06	9,310
Sheep	470	1,939	1,469	04	59
Error in appellant's calculation					19,160

(2) Appellant has also omitted to take into account increased revenue which the Secretary allowed from feedlot yardage. There should be added to appellant's calculation of revenue for 1932 approximately $18,000 on account of additional revenue from the feedlots. This is shown by the following table resulting from a comparison of the amount of revenue which would have been derived from the feedlots in 1932 by the application of the Secretary's rates ($21,754) with the amount actually collected from these facilities ($3,320, as shown in the appendix to appellant's brief, p. 64):

	Number of head to which rates apply	Rate	Amount
		Cents	
Cattle	2,321	60	$1,393
Hogs	1,198	38	455
Sheep	52,385	38	19,906
Total revenues collectible in 1932 under prescribed rates			21,754
Less collections actually made, as shown by appellant (Br. p. 64)			3,320
Additional revenues procurable			18,434

The number of head shown in the above table to which the feedlot yardage charge under the Secretary's order would have applied in 1932 is taken from Gov. Exs. 121, A, p. 121; 121 B, p. 9; 121 C, p. 24.

(3) There are also included by appellant in its expense calculations for 1932 items which should not be considered. Thus, appellant has included in its expenses all taxes actually paid during the year 1932, and has made no deduction therefrom on account of taxes on property found by the Secretary to be not used and useful* (Br. p. 43). An appropriate deduction from total taxes on property found not to be used and useful would have resulted in reducing the expenses for which credit is taken by approximately $8,800 per year. This is clearly shown in paragraph 180 of the Secretary's order in which it is explained that approxi-

* It should be noted that, except for the Transit House, appellant is not challenging on this appeal the lawfulness of the Secretary's exclusion from the rate base of the value of various items of property found to be not used and useful.

mately $8,800 has been deducted for taxes allocable to non-used and useful property (R. 119). This calculation of $8,800 has never been questioned by appellant—yet in the computation at page 43 of its brief appellant has failed to make this deduction. Moreover, the amount of taxes claimed by appellant for 1932 includes all income taxes paid on account of income from property found to be not used and useful, and on income from other extraneous sources.

The foregoing adjustments in revenue and expense would have had the effect of making appellant's net operating income approximately $155,000, under a proper application of the Secretary's prescribed rates to appellant's 1932 business. Taking $155,000 as the adjusted net income for 1932 (instead of $109,172.91, as taken by appellant) and relating it to the fair value of appellant's property, the net return for 1932 is approximately 5.67%, which is clearly non-confiscatory in view of the economic conditions then prevailing.

III. Miscellaneous Questions

A. The prescribed maximum rates and charges are adequately supported by the findings, including the finding that the existing rates and charges are unreasonable and unjustly discriminatory

(Appellant's Brief, Points III and IV, pp. 29, 39)

Appellant complains of the absence of certain "basic or essential findings" (Br., p. 29). Thus appellant states that "no effort was made by the Sec-

retary or the Government witnesses to obtain the costs of *specific* services such as yarding cattle, yarding hogs, yarding sheep" etc. If appellant intends to suggest that explicit findings on the costs of rendering the different types of service stated at the bottom of page 29 of its brief are essential, appellant is plainly in error. Appellant's business does not lend itself to such minute cost analysis as to make feasible the allocation of general costs to each of the specific services which appellant renders. The whole question of the specific rate reductions ordered by the Secretary and their fairness in relation to each other is more fully dealt with at pp. 174–180, *infra*.

Appellant states that the only portions of the Secretary's findings that indicate how he reached the conclusions carried into the order are found in paragraphs 168 and 206 of the findings, which appellant has in part quoted (Br., pp. 30–31). Appellant, however, has improperly construed the Secretary's order inasmuch as the findings upon which the rate schedule is predicated are set forth in numerous paragraphs of the order and include findings with respect to the services rendered and the rates charged therefor under the existing schedule (R. 30–45); the used and useful character of appellant's property (R. 46–70); the valuation of used and useful land (R. 70–88); the value of appellant's structures based upon cost of reproduction new less depreciation (R. 88–106); the amount necessary to be allowed for working capital (R. 106); going

concern value (R. 107–112); determination of fair value based upon the foregoing (R. 112–113); fair rate of return (R. 113–116); reasonable net operating income (R. 116); reasonable operating expenses (R. 116–123); necessary revenue (R. 123); volume of business (R. 123–127); the unreasonableness of existing rates (R. 128); and concluding with a schedule of maximum reasonable rates based upon the foregoing, and with an application of those rates to the volume of business reasonably to be anticipated (R. 128–130). In view of these detailed findings of the Secretary, appellant's contention that the order lacks necessary findings merely because findings of gross and net income have not been expressly set up for each year in the order is clearly without merit.

Appellant also contends that there are no findings which support the increases in the feedlot rates (Br., p. 35). The Secretary's procedure with respect to the feedlots and his findings thereon have already been dealt with in this brief, *supra,* pp. 133–147.

Appellant contends that the Secretary's decision contains no specific findings as to the gradually diminishing receipts of livestock from all sources and corresponding reductions in income during the six-year period (Br. p. 36). The fact is that the Secretary made specific findings with respect to appellant's receipts of livestock during the six-year test period and the fluctuations in receipts of livestock for a period of 24 years (R. 124–126). He

also made findings with respect to the volume of each class of feed sold by appellant each year during the six-year test period (R. 127). From an examination of appellant's experience with respect to the receipts of livestock and the sales of feed, the Secretary made definite findings as to the normal volume of business which it was reasonable to expect appellant would handle and which the Secretary adopted as a rate factor (R. 127).

With respect to the contention that the order is void because the facts found therein do not show that the existing rates and charges were unreasonable during the last year covered by the hearing, the propriety of testing the order by the experience of one abnormal year has already been discussed, *supra,* pp. 164–167. It is submitted that the previously existing rates and charges which produced over a period of six years prior to the hearing an average annual return of 9% on the fair value of appellant's property were unreasonable at the time of the hearing, and that the record adequately supports the Secretary's express findings that such rates and charges were unreasonable at that time.

Appellant suggests that the District Court has not fairly complied with Equity Rule 70½. The District Court, on May 1, 1935, filed a "Memorandum Opinion and Findings of Fact" (R. 910–938). In addition to reciting detailed findings of fact and conclusions of law in the "Memorandum Opinion and Findings of Fact", all of which were separately stated under heads and subheads, the Court also

adopted as its own (with certain minor exceptions) the detailed and specific findings of the Secretary of Agriculture. It is submitted that this fully complies with the equity rule.

B. THE VARIOUS PRESCRIBED MAXIMUM RATES AND CHARGES ARE FAIR AND REASONABLE IN THEIR RELATION TO EACH OTHER, AND THE SPECIFIC REDUCTIONS PRESCRIBED BY THE SECRETARY ARE FAIR AND REASONABLE

(Appellant's Brief, Point VI, p. 60)

Appellant attacks the rate schedule on the ground that the Secretary did not have before him evidence on the cost of rendering specific stockyard services (Br. pp. 60–69). It is contended that the prescribed maximum rates and charges constitute in some instances reductions in percentages which vary as to rates for the different specific services, while in other instances no reductions at all have been made and in still other instances the prescribed maximum rates exceed the rates and charges now in effect, and that there is no evidence to support reductions in the rates for different services by percentages which vary.

In approaching the question of the cost of rendering services, the Secretary did not attempt to arrive at differentiated costs for each service. The character of appellant's business is such that it does not lend itself to a satisfactory cost analysis upon that basis. Appellant does not keep its records and accounts in such a manner as to determine the exact cost of rendering each service. Although the performance of the various functions in the rendition of stockyard services is

specialized to the extent that there are different operating departments, there is the greatest degree of flexibility of organization in order that those who are assigned to certain tasks at one time may be shifted to the performance of other tasks when their services are needed. Appellant's business, except for the feedlots, is operated largely as a unit in the performance of the different services for which rates are charged.

If an attempt were made to determine the functional costs of the differentiated services, many questions would arise as to the practicability of allocating various expenses to the different services performed. The record contains no evidence which would indicate that such an excursion into cost analysis would serve any useful purpose. Any attempt so to allocate costs would lead the Secretary beyond the field of reality and into the field of controversial and academic problems of cost distribution. The Secretary properly declined to be projected into such a speculative undertaking.*

The Secretary properly recognized that in addition to the cost of rendering services, the value of the services should be considered. Accordingly, in prescribing maximum reasonable rates he took

* In *Union Stock Yards Co, of Omaha* v. *United States*, 9 F. Supp. 864, the same contention was made as herein with respect to alleged lack of evidence as to cost of specific services. In rejecting the contentions, the District Court said (at pp. 878–879):

"It appears that the plaintiff's business is operated largely as a unit in the performance of the different services for which rates are charged and the character of the business

into account the interests of shippers also and undertook to prescribe maximum rates upon a basis that is equitable to them. In thus balancing the interests of all the parties, the existing percentage relationship of the rates to each other may be altered, but that does not make the prescribed rates illegal.

With respect to the rates which are unchanged by the Secretary's order, it should be observed that these rates affect what may be termed "incidental services" and that the gross income from these rates is so small that any change which might have been made in them would have had little or no effect on appellant's gross or net income. The particular adjustment in the rate schedule to which appellant objects is the greater reduction in the rates for rail shipments than for truck shipments* (Br. pp. 67–68). Appellant contends that there is not a "scintilla of evidence which will justify a greater reduction in yardage for rail than for truck shipments" (Br. p. 67). But the evidence amply justifies the

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is such that a cost analysis on the basis of differentiated costs for each separate service would not be feasible nor would it serve any practical, useful purpose. Although the performance of the various functions by the plaintiff in the rendition of the services is specialized to the extent that there are different operating departments, there is flexibility in the organization in order that those who are assigned to certain tasks at one time may be shifted to the performance of other tasks at other times, and there is close inter-relation of operating departments."

* It will later be brought out that there is a decided trend in mode of arrival, for all species, from rail to truck, *infra*, pp. 178–180.

action of the Secretary in making a greater reduction in yardage for rail arrivals.

The reasonableness of making less of a reduction in yardage rates for truck arrivals than for rail arrivals is illustrated with the case of cattle. Under appellant's existing tariff, the rate on cattle arriving by rail is 35¢ per head and the rate on cattle arriving by truck is 40¢ per head. On cattle arriving by rail appellant receives, in addition to its yardage and profit on feed, a loading and unloading fee, which is paid by the railroad, amounting to $1.25 per single-deck car (Gov. Ex. 121A, p. 92). On a car of cattle containing 25 head this amounts to about 5¢ per head and practically offsets the difference between the rail and truck rates.

Moreover, truck arrivals consume less feed than rail arrivals, hence appellant's feed revenue from truck arrivals is less. One of appellant's witnesses presented a detailed study to show the differences in the quantities of feed consumed by livestock arriving by rail and that arriving by truck, and the loss resulting from the transition of receipts of livestock from rail arrivals to truck arrivals. In the case of cattle and calves, the witness showed that in 1932 cattle and calves arriving by rail consumed 868 pounds of hay per hundred head, whereas cattle and calves arriving by truck consumed only 442 pounds, the difference being 426 pounds per hundred head in favor of rail arrivals (R. 880). Applying the feed spread prescribed by the Secretary, it is apparent that the revenue on feed from rail

arrivals is 2.6¢ per head greater than that from truck arrivals.

The Secretary's order increases by 3¢ per head the previously existing differential between the yardage rate on rail arrivals of cattle and that on truck arrivals. The previous differential of 5¢ per head was about sufficient to compensate for the loss of loading and unloading revenue brought about by the trend away from rail arrivals toward truck arrivals, but it did not cover the loss of feed revenue brought about by this trend. The addition of 3¢ per head to this differential, making a total differential in the schedule of 8¢ per head offsets the loss of revenue from feed. The recognition of these facts attendant upon the transition in mode of arrival was not only reasonable, but, it would seem, imperative, in the framing of a schedule of maximum reasonable rates. Such recognition operates to appellant's advantage, and appellant is not in a position to complain. Appellant's challenge (Br. p. 67) to the Government "to point to a scintilla of evidence which will justify a greater reduction in yardage for rail than for truck shipments" would seem to have been fully answered by reference to the above undisputed facts as to the loss of the loading and unloading charge and of feed revenue through the change in mode of arrival. The same situation exists as to hogs (R. 883), hence the Secretary also increased the differential between truck and rail receipts as to that species (Appellant's Br. p. 65).

Appellant contends that upon finding its total net operating income to be unreasonable, the only order which could have been justified would have been a proportionate percentage reduction in all of its charges (Br. p. 68). This assumes that the degree of unreasonableness of each and every rate will always be the same and will always bear the same inter-rate relationship. It also assumes that it is practicable to preserve every inter-rate percentage relationship, as though there were something inviolate about a percentage relationship.

Sufficient evidence was received as to the manner in which livestock is handled at St. Joseph on which to predicate a schedule of maximum rates that is fair in its structure. The burden of proof is on appellant, and appellant has not proved that the Secretary's order violates any of appellant's rights by prescribing maximum rates which in some degree change the existing inter-rate percentage relationships.

C. THE FINDINGS OF THE SECRETARY WHICH WERE THE BASIS OF HIS EARLIER ORDER ENTERED IN 1931 WERE NOT RES JUDICATA, AND THEY WERE NOT BINDING UPON THE SECRETARY IN PRESCRIBING MAXIMUM REASONABLE RATES AFTER THE SECOND HEARING IN 1933

(Presented in Several of Appellant's Points, notably Point V, pp. 47–50; Point XI, pp. 104–106; Point XII, pp. 112–113; and Point XV, pp. 171–172)

In arguing several of its points, appellant has relied upon certain findings of the Secretary which were made after the first hearing and upon which the first order of the Secretary, entered in 1931, was based. Appellant has set forth in the appen-

dix to its brief the findings and order of the Secretary in this earlier proceeding (Appendix to Appellant's Brief, pp. 10–63). Thus, appellant points out that in the first proceeding the Secretary found that the value of the Transit House should be included in the rate base (Br., p. 105); that a separate allowance should be made for going concern value (Br., p. 112); that $102,000 should be allowed to cover repairs, maintenance, replacements, and a reserve for depreciation (Br., p. 137); and that the land in Zone A had a value of 25¢ per square foot (Br., p. 161). On the other hand, appellant contends that because the Secretary had in the first proceeding excluded from the rate base the value of the feedlots appellant assumed that the same would be done in the second hearing (Br., p. 98). Appellant, in effect, seeks to establish that the findings made in the first proceeding are *res judicata* (notwithstanding that in the court proceeding attacking the first order appellant contended that the findings upon which that order was based were not supported by substantial evidence or by the weight of the evidence).

Appellant's novel contention that the order which it sought to have set aside as unlawful is *res judicata* requires consideration and analysis of the holding of the District Court in the suit brought by appellant to set aside the first order of the Secretary, and also of the administrative proceedings which followed the granting of an injunction by the District Court in the first case. In *St. Joseph*

Stockyards Co. v. *United States,* 58 F. (2d) 290 (the case involving appellant's attack upon the first order of the Secretary) three principal questions were involved: (1) The power of the Secretary to value appellant's property in connection with prescribing rates; (2) the reasonableness of the rates prescribed in view of the record, and whether such rates were confiscatory (which involved in general the same sort of attack upon the first order which appellant has made herein upon the second order); and (3) whether by reason of changed economic conditions, which were urged upon the basis of evidence heard before the court, the enforcement of the order of the Secretary should be enjoined (58 F. (2d) 293).

The court held (1) that the Secretary had power to hear evidence and make findings on property value; (2) that it was not necessary to pass upon the reasonableness of the rates on the question of confiscation as presented by the allegations attacking the Secretary's findings; and (3) that the Secretary should have granted a petition for rehearing alleging changed economic conditions and that, on the basis of evidence offered by appellant before the court, the enforcement of the order under the changed conditions would have been unreasonable and confiscatory. The court granted an injunction solely on account of the proof of changed economic conditions since the entry of the order.* The Gov-

* The court said (at p. 297):

"The rehearing should have been granted. Failure to grant it left to the petitioner no other recourse in the pres-

ernment had contended that this evidence was inadmissible at the court hearing, which was held prior to the decision of this Court in the case of *Atchison, Topeka & Santa Fe Ry. Co.* v. *United States*, 284 U. S. 248, and holding such view, the Government did not introduce any rebuttal evidence on the factual questions arising from appellant's claim of changed economic conditions.

After summarizing appellant's contentions respecting the Secretary's findings, the court, plainly showing that it was not passing upon these contentions, said (at p. 295):

> It is not necessary to decide them, since the conclusion has been reached that an injunction must issue because of the refusal of the Secretary to grant to the petitioner a reopening of the proceeding and because of the proved confiscatory effect of the rates fixed by the Secretary's order when applied to the business of the petitioner in the years 1930 and 1931.

Following the above-quoted sentence, there was a footnote in which the court indicated that there was among the judges a two to one division of opinion as to the adequacy of the evidence to support the

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ervation of its constitutional rights than to present to this court the facts showing changed conditions and the effect they would have if the Secretary's order was enforced. That testimony clearly shows that the enforcement of the order of the Secretary under the conditions as changed would result in a confiscation of the petitioner's property in violation of the due process clause of the Fifth Amendment."

Secretary's findings, and also upon the scope of judicial review. It should be carefully noted, however, that this footnote was prefaced by the following sentence:

> *Although the court does not in this case decide the questions referred to,* they have been given careful consideration. [Italics supplied.]

So it is plain that the court did not pass upon the lawfulness of the Secretary's findings, but decided only that changed economic conditions rendered the rates confiscatory.

The opinion of the District Court in the above case was rendered April 16, 1932. On July 19, 1932, Secretary Hyde entered an order reopening the proceeding (R. 394–397). In the order reopening the matter the Secretary (after reciting the facts relating to the previous order and the instituting of a suit to enjoin its enforcement) stated (R. 395):

> A temporary injunction was issued in accordance with the prayer of the bill and, after a hearing at which the Court received evidence in support of the allegations respecting changed economic conditions, the injunction was made permanent, it being the opinion of the Court that the Acting Secretary erred in denying the prayer of respondent's petition for a rehearing. The Court based its opinion in this regard upon the decision of the Supreme Court of the United States in the case of *Atchison,*

Topeka and Santa Fe Railway Company v. *United States*, 284 U. S. 248, decided January 4, 1932.

[fol. 843] *In view of the above mentioned decisions, the Secretary of Agriculture is of opinion that it is his duty, under the law, to reopen this docket and hold a rehearing to the end that all parties may be given opportunity to present such evidence of changes, both general and particular, which have occurred since the year 1929 as may be material to the issues raised by the order of inquiry herein; and also to the end that all parties may have opportunity to present such other evidence as may be material to said issues;* and further to the end that a general inquiry may be had into the reasonableness and lawfulness of each and every rate and charge, and each and every rule and regulation affecting any rate or charge stated in any and all tariffs or schedules of rates and charges filed by respondent and now in effect for stockyard services rendered by it at the St. Joseph Stockyards, South St. Joseph, Missouri, * * *. [Italics supplied.]

Not only did the Secretary reopen the case on account of the District Court's decision, but he further vacated and set aside the first order. Thus the order of July 19, 1932, reopening the proceedings, stated (R. 396):

It is ordered that the aforesaid order of the Acting Secretary of Agriculture entered

> *in this docket on July 20, 1931, be and the same hereby is vacated and set aside; and that this docket be and the same hereby is reopened.* [Italics supplied.]

The Secretary then proceeded to order a new hearing, and provided that the record made in the first hearing should also constitute part of the record in the instant proceeding (R. 396). Thus, although the evidence taken at the first hearing was expressly made part of the record in the present proceeding, *the first order of the Secretary has no present status whatever, first, because it was set aside by the District Court on account of proved changes in economic conditions, and, second, because it was expressly vacated and set aside by the Secretary.*

Even, however, if the first order had been sustained by the District Court, it would not have been *res judicata.* It might have been sustained and applied, and then later have become confiscatory on account of changed conditions which subsequently might have required its modification. In *Tagg Bros. & Moorhead* v. *United States,* 280 U. S. 420, the order involved was sustained. Nevertheless, this Court said (at p. 445):

> He [the Secretary] has the power and the duty to modify his order, if new evidence warrants the change. * * * A rate order is not *res judicata.* Every rate order made may be superseded by another.

Other cases also support the view that (quite apart from the previous court decision setting aside

the first order, and its subsequent revocation by the Secretary) the first order was not binding on the Secretary in the second proceeding. In *Clark's Ferry Co.* v. *Public Service Commission of Pennsylvania,* 291 U. S. 227, it appeared that the Commission had valued the Company's property at $767,800 in an order entered June 8, 1926. Another proceeding was instituted in January 1930, and in that proceeding the Commission found that the Company's property as of February 2, 1932, was still $767,800. As one ground for setting aside the order based upon the second finding, the Company urged that the Commission had treated its 1926 decision as *res judicata* although the value of its property was greater in 1932 than it had been in 1926. *If the Company's contention in this respect had been well founded, it presumably would have constituted a ground for setting aside the order,* but this Court held that the Commission had not regarded its first findings as *res judicata,* but had "received evidence as to alleged changes in value and estimates of the cost of reproducing the property", and had determined that cost conditions had not changed materially since 1926, and "upon a complete examination of the entire record in both proceedings" had "found that the fair value of the property was $767,800 as of February 1932."

Appellant, in seeking a rehearing in the first proceeding, ran the risk that if it had been granted the Secretary might have heard evidence showing

lower valuations than had existed at the time of the first hearing (1929). There was a severe recession in economic conditions throughout the country after the 1929 hearing—a recession of which this Court has taken judicial notice. *Atchison, Topeka & Santa Fe Ry. Co.* v. *United States,* 284 U. S. 248, 260. That recession, of course, affected property values, and its full force had been felt at the time the second hearing commenced (January 10, 1933).* Obviously, in seeking the rehearing it had been appellant's purpose to introduce before the Secretary evidence of the type which was later offered before the District Court—evidence concerned primarily with an alleged decline in net operating income. See 58 F. (2d) 290, 296. In holding that the Secretary should have granted the petition for rehearing, and that the evidence offered by appellant before the court indicated that in view of changed conditions the order was confiscatory, the District Court in that case said (at p. 297):

> This conclusion indeed assumes that the valuation found by the Secretary is still a fair valuation of petitioner's property. But it is proper that that assumption be made. The rates for services ordered by the Secretary are predicated upon that as-

* The downward trend of property values during the period between 1924 and 1932 was apparently given consideration by this Court in *Clark's Ferry Bridge Co.* v. *Public Service Commission of Pennsylvania,* 291 U. S. 227, 236.

> sumption. Without it the order is invalid as having no foundation. It will not do to say that changed conditions also may have greatly depreciated the fair value of the petitioner's property. The valuation fixed is the only valuation in the case, and it cannot be questioned and at the same time affirmed. The petitioner must indeed show that the rates for services are confiscatory, but is not required to show the valuation is still that which the Secretary, not only admits, but contends, is a fair valuation.

Thus the holding of the District Court was predicated upon the valuation of the property which had been made in 1929—the only valuation which was in evidence before the court. The court, however, as shown above, expressly recognized that the rates in question might not have been confiscatory if judged in relation to a different valuation.

In the order of July 19, 1932, reopening the proceeding, the Secretary expressly directed that the hearing should be a general inquiry and that full evidence should be taken on all pertinent questions, such evidence to be considered in addition to the evidence that had been taken at the first hearing. Obviously, it was proper and necessary to take new evidence on *value* as well as new evidence on receipts. The purpose was to bring the record up to date in every respect. The final result might be rates either higher or lower than those first prescribed.

Appellant, having successfully enjoined the enforcement of the first order solely because it was not based upon depression conditions, should not now object to the second order because it took those conditions into account. Appellant, having obtained a decree setting aside the first order, is now in the anomalous position of urging that the second order is confiscatory because in some respects it does not reach the same result as the first order. Obviously, when a new hearing is granted on account of changed economic conditions, lower values and rate of return are quite as pertinent factors as lower revenue, and appellant cannot claim the benefits of one without accepting the consequences of the other.*

For the foregoing reasons, it is submitted that all references in appellant's brief to the findings of the Secretary in the first proceeding are irrelevant and immaterial, and should be disregarded.

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* Nor is appellant warranted in citing orders of the Secretary which have been entered in the past at other stockyards in which certain items respecting valuation or other matters have been given different treatment (Br. p. 124). As this Court said in *Virginian Ry.* v. *United States*, 272 U. S. 658 (at pp. 665–666):

"This Court has no concern with the correctness of the Commission's reasoning, with the soundness of its conclusions, *or with the alleged inconsistency with findings made in other proceedings before it.*" [Italics supplied.]

See also *Interstate Commerce Commission* v. *Union Pacific R. R.*, 222 U. S. 541, 551; *Arizona Grocery Co.* v. *Atchison, Topeka & Santa Fe Ry. Co., et al.*, 284 U. S. 370, 389.

D. THE SECRETARY PROPERLY DENIED THE PETITION FOR REOPENING AND FURTHER HEARING PRESENTED TO HIM IN FEBRUARY 1934, AFTER THE SECOND HEARING AND PRIOR TO THE MAKING OF THE ORDER HEREIN COMPLAINED OF

(Appellant's Brief, Point XVI, p. 176)

On February 2, 1934, nearly a year after the conclusion of the second hearing, appellant filed with the Secretary of Agriculture a "Petition for Re-Opening and Further Hearing" (R. 15–19). It alleged that since the close of the hearing there had occurred "such substantial changes in circumstances and conditions which affect the value of respondent's property, its income, and probable receipts of livestock and expenses at its yards", that the record at the hearing "no longer represents fairly the present conditions affecting respondent's operations, nor does it afford a proper basis for an estimate of respondent's income and expenditures during the period within which an order such as is proposed herein would be in force" (R. 16).

The "changes in circumstances and conditions" specifically alleged were (1) the enactment of the Agricultural Adjustment Act, approved May 12, 1933, with its avowed purpose of reducing the number of hogs to be marketed in the future and the probability that cattle and sheep might also be brought within the scope of the reduction program; (2) the enactment of the National Industrial Recovery Act, approved June 16, 1933, which it was alleged would increase appellant's operating expenses; (3) the reduction of the gold content of the dollar from which "it will necessarily follow" that

the fair value of appellant's land and structures will be much greater than that determined by the engineers and appraisers who testified at the hearing; and (4) that appellant's net income for 1933 was less than the amount found by the Secretary to be a fair net operating income. On the basis of the above allegations, the Secretary was asked to re-open the proceedings for further hearing. The Secretary denied the petition (R. 29).*

That the "Petition for Re-Opening and Further Hearing" did not state facts requiring a rehearing is apparent from the following analysis of its allegations:

(1) As for the paragraph with respect to the Agricultural Adjustment Act, the Secretary himself, in denying the petition, stated that the livestock reduction program was experimental and that its effect upon appellant's particular business was problematical (R. 27). Even if a rehearing had been held, only speculative opinion could have been introduced as to the probable effect of the program on appellant's business. The Secretary properly concluded that there was then no present reason for re-opening the case to hear opinions as to the possible effect of the Agricultural Adjustment program upon volume of receipts. Appellant undertakes to support its contentions with respect to the petition for rehearing by citing certain figures which purport to represent receipts in 1935, saying

* The reasons for denial of the petition are set forth in detail in the order, paragraphs 6c and 6h (R. 26–29).

these figures could have been introduced if the case had been re-opened and would have shown the results of the Agricultural Adjustment program on appellant's business (Br. pp. 182–184). In answer it is enough to say that these figures (since they purport to relate to 1935) *were unknown to appellant when the petition for rehearing was filed and that the petition was not based upon such figures, and that, moreover, such figures are not in the record and could not have been put there even if a rehearing had been granted in 1934.*

(2) As for the paragraph with respect to the National Industrial Recovery Act and the effect thereof upon appellant's expenses, the Secretary made an investigation through accounts and, as shown in the findings (paragraphs 6e and 6f, R. 27–28), the investigation indicated that the allegations with respect to increased labor costs due to the National Industrial Recovery Act were not well founded.* The speculative character of the allegations with respect to increased labor costs for the future as a result of the National Industrial Recovery Act is only emphasized by the fact

* This investigation by the Secretary was made over appellant's protest that such an investigation should not be made without formal hearing and right of cross-examination. The purpose in making the investigation, however, was merely to determine whether there was a reasonable basis for re-opening the case. *The result of the investigation did not in any way receive consideration in the formulation of the rate schedule.* In this respect the situation is entirely different from that involved in *Interstate Commerce Commission* v. *Louisville & N. Ry. Co.*, 227 U. S. 88, relied upon

that, within a little more than a year after the petition for re-opening was filed, this Court declared the National Industrial Recovery Act unconstitutional. *Schechter Corp.* v. *United States,* 295 U. S. 495.

(3) As for the paragraph with respect to the effects of governmental monetary policy upon appellant's business, those allegations also were purely speculative and there was obviously no evidence that could have been offered at the time the re-opening was requested which would have had any probative value in determining the future effect of this policy on appellant's business.

(4) With respect to the allegations that the rates of the Secretary, if applied to the business in 1933, would have produced a net income less than that found by the Secretary to be reasonable, this of itself did not require re-opening. When the petition was presented, the Secretary had a careful examination made of the books containing the figures

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by appellant (Br. p. 179). It was entirely proper for the Secretary to make this informal investigation to determine whether or not the petition for re-opening was reasonably well founded. If the Secretary had no such right, it would follow that he was bound to pass blindly upon the question whether a petition for rehearing should be granted, or else be bound to grant a rehearing in order to determine whether or not he should grant a rehearing. This latter course would lead to a vicious circle and would pave the way for perpetually prolonging rate proceedings.

on which the allegations were based, and as a result of this investigation he concluded that the allegations were not supported and did not require a rehearing (R. 26–29). The Secretary was justified in making this examination, not for the purpose of gathering material for use in prescribing rates, but to determine whether or not the allegations had sufficient merit to require a reopening. In the light of the Secretary's findings after this examination, it is submitted that he was justified in refusing to reopen the case, and that the mere making of such allegations *per se* did not require a reopening. As stated by the District Court in passing upon this contention (R. 912):

> As to the estimated effect of these rates if applied to 1933 business, the difference between the amount which is claimed would have been earned thereunder and the amount found by the Secretary to constitute the reasonable net return is too small to be taken as a guide for a rate. It is to be expected that any business will have annual fluctuations. Rates are not based upon the result of the business of any one year alone but upon what is estimated as being the average business over a proper term of years, the future being gauged by the past. The past years here taken by which to gauge the future include six years, two of which were deeply affected by the depression. The experience before the Secretary was up to ten days before the date of the hearing.

After discussing all of the grounds urged by appellant for reopening, the District Court concluded (R. 912–913):

> All of the above contentions involve effects upon the business of petitioner which are entirely uncertain and unpredictable with any degree of accuracy. They are being urged in connection with the rates in the order here challenged. Only actual experience under such rates can furnish any real criterion or guide as to the effects urged. This experience should be obtained by practical test. No sufficient showing appears for not making such test to determine these matters which are o fsuch doubtful and uncertain influence. The case should not be reopened at this time. If actual experience hereafter for a proper period under the rates fixed by the order reveals sufficient reasons, the order can then be challenged through the proper channels.

It is submitted that this conclusion was correct. The rate-making power would be nullified if the rate-making authority were required to re-open proceedings every time allegations were made with respect to some changes in economic life affecting the petitioner's business. The decisions of this Court do not require re-opening as a matter of course every time a petition to that end is presented to the rate-making body. In *Atchison, Topeka & Santa Fe R. R. Co.* v. *United States,* 284 U. S. 248, this Court held that an order of the Interstate Commerce Commission should have been enjoined by

the lower court upon a showing that a petition for rehearing (alleging radically different facts from those existing when the record before the Commission was closed) had been denied. In that case the record before the Commission had been closed in September 1928; a petition for rehearing had been presented in September 1930, and a second petition for rehearing had been presented in February 1931. This Court, in holding that the carriers were entitled to a rehearing, held that the record before the Commission "pertains to a different economic era and furnishes no adequate criterion of present requirements" and that the petitions did not present "the usual case of possible fluctuating conditions, but of a changed economic level."

The decision in the *Santa Fe* case was further explained and applied in *United States* v. *Northern Pacific R. R. Co.*, 288 U. S. 490, in which the Circuit Court of Appeals (on a showing that the record therein before the Interstate Commerce Commission had been closed on January 15, 1930, and a petition for rehearing had been filed with the Commission on February 3, 1932) had held that the decision of this Court in the *Santa Fe* case required a rehearing and that, because of the Commission's denial of the petition for rehearing the order could not be sustained. In reversing this judgment, this Court said (at p. 494):

> The decision in the *Santa Fe* case is not to be extended to require a rehearing in every rate case for changed economic conditions,

> however insignificant the effect of the order on carrier revenue. The rule announced, while intended to safeguard substantial rights of the railroads, may not be invoked where its application would disenable the Commission to protect the interest of the public.

Under the holding in the *Northern Pacific* case it is clear that the Secretary was justified in the present case in denying the petition for re-opening and further hearing.*

Appellant made no effort to present to the District Court evidence supporting the allegations of the petition for re-opening and further hearing, as it did in the suit attacking the first rate order of the Secretary. *St. Joseph Stockyards Co.* v. *United States,* 58 F. (2d) 290. The record in this case, therefore, does not contain a shred of evidence in support of such allegations.

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* Similar petitions for rehearing have been made in other rate proceedings recently held under the Packers and Stockyards Act, and have been denied by the Secretary. In four of these proceedings the rate orders have been challenged in District Courts on the ground *inter alia* that it was error to deny the petitions for rehearing. In each case, however, the order of the Secretary has been sustained by the District Court, and the denial of the petition for rehearing has in each case been expressly upheld. *Union Stockyards Company of Omaha* v. *United States*, 9 F. Supp. 864, 871, 873; *Morgan* v. *United States*, 8 F. Supp. 766; *American Commission Co.* v. *United States*, 11 F. Supp. 965, 972; and *Acker* v. *United States*, 12 F. Supp. 776.

E. THE POSITION OF THE DISTRICT COURT WITH RESPECT TO THE SCOPE OF JUDICIAL REVIEW IS NOT REVERSIBLE ERROR

(Appellant's Brief, Point I, p. 10)

The District Court stated at several places in the opinion that the findings of fact made by the Secretary are conclusive if supported by substantial evidence (R. 913–917). Appellant contends that this was error (Br., pp. 10–22).

It should be observed that Section 316 of the Packers and Stockyards Act adopts the same procedure for enjoining the enforcement of orders of the Secretary of Agriculture that had been provided by previous laws for enjoining the enforcement of orders of the Interstate Commerce Commission (42 Stat. 168; U. S. C. Title 7, Sec. 217). The findings of the Commission, of course, are subject to review, "but when supported by evidence are accepted as final; not that its decision, involving as it does so many and such vast public interests, can be supported by a mere scintilla of proof—but the courts will not examine the facts further than to determine whether there was substantial evidence to sustain the order." *Interstate Commerce Commission* v. *Union Pacific R. R. Co.*, 222 U. S. 541, 547–548. See also *Illinois Central R. R. Co.* v. *Interstate Commerce Commission*, 206 U. S. 441, 454. This Court has held that the decisions involving review of orders of the Interstate Commerce Commission are also applicable to the review under Section 316 of the Packers and Stockyards Act of rate orders of the Secretary of

Agriculture. *Tagg Bros. & Moorhead* v. *United States,* 280 U. S. 420, 442.

Rate making, of course, is a legislative process. *Prentis* v. *Atlantic Coast Line,* 211 U. S. 210, 226. This Court has said that "Where the constitutional validity of a statute depends upon the existence of facts, courts must be cautious about reaching a conclusion respecting them contrary to that reached by the legislature; and if the question of what the facts establish be a fairly debatable one, it is not permissible for the judge to set up his opinion in respect of it against the opinion of the lawmaker." *Radice* v. *New York,* 264 U. S. 292, 294.

Factual determinations made by a legislature as a basis for the enactment of a regulatory statute, even in a suit attacking the constitutionality of the statute, are accorded a presumption of correctness. The same presumption of correctness should be accorded findings of fact of a rate-making body, even in a suit attacking the constitutionality of an order based thereon. Even though the courts have a duty to review the evidence more critically when confiscation is an issue and to reach their independent conclusions of constitutional fact, it would not be feasible to require them to substitute their independent judgment as to the weight of the evidence for that of the body exercising delegated legislative power upon every factual question as to which conflicting evidence is presented. *It*

is submitted that constitutional rights are adequately protected if the reviewing court examines the evidence for itself and determines that it does not compel arrival at different conclusions of fact than those reached by the rate-making authority. The proper scope of review is that stated by this Court in *Los Angeles Gas & Electric Corp.* v. *Railroad Commission,* 289 U. S. 287, when in upholding a rate order it was said (at pp. 315–316), "our inquiry must be * * * whether the evidence *requires the conclusion* that by reason of the inadequacy of the valuation the result is confiscation." [Italics supplied.]

It is quite apparent that the District Court made a minute and careful analysis of the evidence. The opinion discusses in considerable detail the evidence on the various questions presented, and makes many specific findings. The court also, in addition to specific findings contained in the opinion, adopted the findings of the Secretary as its own, thereby indicating that its review of the evidence led it to substantial agreement with the Secretary's findings of fact. It is submitted that appellant had an adequate judicial review in the District Court.

But even if the District Court in its discussion of the scope of judicial review adopted an erroneous position, it would not follow that the decree should be reversed. The issue in this case is not

the reasoning adopted by the lower court in reaching the conclusion that the maximum rates prescribed by the Secretary are not confiscatory *but whether those rates are in fact confiscatory.* This is an equity case and it comes before this Court on appeal. All of the material portions of the record before the Secretary and the District Court are now before this Court. Appellees are willing to submit the order herein challenged to the test of any degree of judicial review which this Court deems to be required by the Constitution. If this Court finds that the maximum rates prescribed by the Secretary are not in fact confiscatory, the decree of the lower court is correct and should be affirmed irrespective of possible error in its reasoning. *West* v. *Chesapeake & Potomac Telephone Co.*, 295 U. S. 662, 680.

The Government contends that in so far as the ultimate decision of this case is concerned, it is immaterial what scope is given to judicial review because it is believed that a clear preponderance of the evidence shows that the maximum rates prescribed are fair, reasonable, and non-confiscatory.

It is clear, however, that the judgment of the Secretary on the evidence should be given great weight and should not be treated as nugatory. The Secretary is "a tribunal appointed by law and informed by experience" * to determine reasonable

* *Illinois Central R. R. Co.* v. *Interstate Commerce Commission*, 206 U. S. 441, 454.

and non-discriminatory stockyard rates, and it is patent from an examination of the order challenged herein that a vast amount of careful study in the light of technical knowledge surrounding the operation of stockyards has gone into the preparation of this order.**

The burden of proof rests heavily upon appellant to prove by convincing evidence that the order is confiscatory. In *Los Angeles Gas & Electric Corp.* v. *R. R. Commission*, 289 U. S. 287, this Court said (at pp. 304–305):

> We approach the decision of the particular questions thus presented in the light of the general principles this Court has frequently declared. We have emphasized the distinctive function of the Court. We do not sit as a board of revision, but to enforce constitutional rights. *San Diego Land & Town Co.* v. *Jasper*, 189 U. S. 439, 446. The legislative discretion implied in the rate making power necessarily extends to the entire legislative process, embracing the method used in reaching the legislative determination as well as that determination itself. We are not concerned with either, so long as constitutional limitations are not transgressed. When the legislative method is disclosed, it may have a definite bearing upon the validity of the result reached, but

** The District Court found that "This order shows careful consideration by the Secretary" (R., 917).

> the judicial function does not go beyond the decision of the constitutional question. That question is whether the rates as fixed are confiscatory. And upon that question the complainant has the burden of proof and the Court may not interfere with the exercise of the State's authority unless confiscation is clearly established.

See also *Lindheimer* v. *Illinois Bell Telephone Co.*, 292 U. S. 151, 169; *Dayton Power & Light Co.* v. *Public Utilities Commission of Ohio*, 292 U. S. 290, 298.

Manifestly it is not enough for appellant to establish that the Secretary may have erred with respect to some of the minor factual items or that the District Court may have erred in some of its reasoning. The position which appellant must sustain in order to succeed in this appeal is to prove beyond reasonable doubt that the total result of the Secretary's determination as to maximum just and reasonable rates is necessarily confiscatory. Even if error may have been committed in some particulars, the order should be sustained if such error is offset by liberality in other particulars. *Lincoln Gas Co.* v. *Lincoln*, 250 U. S. 256, 266–268. It is respectfully submitted that the record in this case demonstrates beyond doubt that appellant has completely failed to sustain its burden of proof.

CONCLUSION

It is respectfully submitted that the decree of the District Court should be affirmed.

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FEBRUARY 1936.

APPENDIX

Title III of the Packers and Stockyards Act, 1921, c. 64, 42 Stat. 159, 163–168 (U. S. C., Title 7, Secs. 201 *et seq.*) provides in part as follows:

> SEC. 301. When used in this Act—
>
> (a) The term "stockyard owner" means any person engaged in the business of conducting or operating a stockyard;
>
> (b) The term "stockyard services" means services or facilities furnished at a stockyard in connection with the receiving, buying or selling on a commission basis or otherwise, marketing, feeding, watering, holding, delivery, shipment, weighing, or handling in commerce, of livestock;
>
> (c) The term "market agency" means any person engaged in the business of (1) buying or selling in commerce livestock at a stockyard on a commission basis or (2) furnishing stockyard services; and
>
> (d) The term "dealer" means any person, not a market agency, engaged in the business of buying or selling in commerce livestock at a stockyard, either on his own account or as the employee or agent of the vendor or purchaser.
>
> SEC. 304. It shall be the duty of every stockyard owner and market agency to furnish upon reasonable request, without discrimination, reasonable stockyard services at such stockyard * * *.
>
> SEC. 305. All rates or charges made for any stockyard services furnished at a stockyard by a stockyard owner or market agency shall be just, reasonable, and non-

discriminatory, and any unjust, unreasonable, or discriminatory rate or charge is prohibited and declared to be unlawful.

SEC. 310. Whenever after full hearing upon a complaint made as provided in section 309, or after full hearing under an order for investigation and hearing made by the Secretary on his own initiative, either in extension of any pending complaint or without any complaint whatever, the Secretary is of the opinion that any rate, charge, regulation, or practice of a stockyard owner or market agency, for or in connection with the furnishing of stockyard services, is or will be unjust, unreasonable, or discriminatory, the Secretary—

(a) May determine and prescribe what will be the just and reasonable rate or charge, or rates or charges, to be thereafter observed in such case, or the maximum or minimum, or maximum and minimum, to be charged, and what regulation or practice is or will be just, reasonable, and nondiscriminatory to be thereafter followed; and

(b) May make an order that such owner or operator (1) shall cease and desist from such violation to the extent to which the Secretary finds that it does or will exist; (2) shall not thereafter publish, demand, or collect any rate or charge for the furnishing of stockyard services other than the rate or charge so prescribed, or in excess of the maximum or less than the minimum so prescribed, as the case may be; and (3) shall conform to and observe the regulation or practice so prescribed.

SEC. 313. Except as otherwise provided in this Act, all orders of the Secretary under this title, other than orders for the payment of money, shall take effect within such reas-

onable time, not less than five days, as is prescribed in the order, and shall continue in force until his further order, or for a specified period of time, according as is prescribed in the order, unless such order is suspended or modified or set aside by the Secretary or is suspended or set aside by a court of competent jurisdiction.

SEC. 315. If any stockyard owner, market agency, or dealer fails to obey any order of the Secretary other than for the payment of money while the same is in effect, the Secretary, or any party injured thereby, or the United States by its Attorney General, may apply to the district court for the district in which such person has his principal place of business for the enforcement of such order. If after hearing the court determines that the order was lawfully made and duly served and that such person is in disobedience of the same, the court shall enforce obedience to such order by a writ of injunction or other proper process, mandatory or otherwise, to restrain such person, his officers, agents, or representatives from further disobedience of such order or to enjoin upon him or them obedience to the same.

SEC. 316. For the purposes of this title, the provisions of all laws relating to the suspending or restraining the enforcement, operation, or execution of, or the setting aside in whole or in part the orders of the Interstate Commerce Commission, are made applicable to the jurisdiction, powers, and duties of the Secretary in enforcing the provisions of this title, and to any person subject to the provisions of this title.

U. S. GOVERNMENT PRINTING OFFICE: 1936

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No. 497

In the Supreme Court of the United States

OCTOBER TERM, 1935

ST. JOSEPH STOCK YARDS COMPANY, APPELLANT

v.

THE UNITED STATES OF AMERICA AND THE SECRETARY OF AGRICULTURE

ON APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF MISSOURI

MEMORANDUM WITH RESPECT TO APPELLANT'S OBJECTIONS AND EXCEPTIONS TO APPELLEE'S BRIEF

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The Government respectfully submits this memorandum for the consideration of the Court in connection with appellant's objections and exceptions to the Government's brief.

Appellant has quoted numerous sentences from the Government's brief and asserted either that no record reference is shown for the sentence quoted or that the record reference cited does not support the statement made.

The Government respectfully submits that in each instance appellant's objections and excep-

tions are unwarranted. As will appear from the following analysis and comment, many of the sentences as to which appellant states that no record reference is shown are statements made either immediately preceding or following factual statements as to which full record references (which are not challenged by appellant as not supporting the statement made) are given.

On pages 2 and 3 of appellant's objections and exceptions sentences are quoted from pages 17, 18, 19, 20, 21, 22, 23, and 25 of the Government's brief with the comment as to each that no reference to the record is given. It suffices to say that each of these sentences is taken from the "Summary of Argument" in which it is not customary to cite record references. The "Summary of Argument" purports merely to be a concise statement of the argument to be elaborated in greater detail with appropriate record references under the section of the brief headed "Argument." As for the sentence quoted from page 21 of the Government's brief to the effect that the capital stock outstanding was $1,875,000, reference to Government Exhibit 121–A, page 381, shows that since 1930 the outstanding capital stock has been carried on appellant's books at $1,875,000.

The remaining objections and exceptions will be taken up and discussed seriatim. Appellant's references to the Government's brief and the sentences which are quoted therefrom will in each instance

(except those sentences quoted by appellant from the "Summary of Argument") be repeated, followed by such comment or explanation as seems appropriate.

Govt. brief—p. 31:

> While it had this original purpose, it is not used exclusively by employees or patrons of the stockyards.

Comment: At the end of the paragraph containing the above quoted sentence a reference to page 408 of the record is given. On that page the witness testified with respect to the Transit House that it "is not used exclusively for employees or patrons of the yards in connection with their compensation or stockyard services rendered to them."

Govt. brief—p. 32:

> * * * even though their yards are located some distance from the business section of the city. (R. 209).

Comment: The testimony at page 209 of the record certainly indicates that the stockyards is some distance from the business section of the city of St. Joseph. However, the record contains further support for the sentence quoted. Government Exhibit 128, page 3, contains a general description of appellant's land, and states: "The lands of the St. Joseph Stock Yards Company are located largely outside of the city limits of St. Joseph, and about 3¼ miles, at their center of activity, from the center of the business district of the city." Supplemental

map No. 5 of the same Exhibit also shows the relation of the stockyards to the city of St. Joseph, and from the scale of the map it is manifest that the distance is at least three miles from the main stockyards area to the heart of the city.

Govt. brief—p. 33:

> * * * (many, if not most, of whom do not personally accompany their livestock to market, and very few of whom use the Transit House) * * *.

Comment: The parenthetical clause is supported by the record at pages 272, 375, and 408, from which it appears that the [illegible]nal users of the Transit House are now commercial truckers rather than the owners or shippers of livestock, and from which the inference is inescapable that those who ship by rail seldom accompany their livestock to market.

Govt. brief—p. 51:

> Spratt obtained his value of the Belt land by comparing it with appellant's adjoining land, but in doing so he capitalized at 6% the income derived by appellant at its then prevailing rates.

Comment: The above statement is supported by consideration of the testimony of Spratt at pages 244, 255, 257, and 258 of the record.

Govt. brief—pp. 51–52:

> So up to this point it is obvious that the whole value of the stockyards land and of the right-of-way had been calculated by Spratt upon a capitalization of the stockyard com-

> pany's earnings under the then existing rates—obviously a fallacious method when rates themselves are fixed by regulatory authority.

Comment: The above sentence is a conclusion from the full page of discussion which immediately precedes it in the brief and in which discussion numerous record references are cited.

Govt. brief—p. 52:

> But when Spratt, in 1932, came to make a reappraisal of Zone A he relied upon the consideration stated in the mere paper transaction between appellant and its subsidiary, rather than upon the later sale to outside parties.

Comment: The above sentence is amply supported by the cross-examination of Mr. Spratt, at pages 786–793 of the record.

Govt. brief—p. 52:

> In this proceeding Spratt and others testified that the total value of the Belt property for rate-making purposes in the year 1928 was $2,500,342 (Gov. Ex. 135, p. 158). In reaching this valuation he had included the land at 30¢ per square foot (Gov. Ex. 135, p. 25).

Comment: The quoted sentence does not say that Spratt alone testified to a value of $2,500,342, but it says that "Spratt and others" so testified. Government Exhibit 135, page 158, contains the identical figure quoted above as being the amount

which in 1928 appellant claimed before the Interstate Commerce Commission to be the value of the Belt property for rate-making purposes. Government Exhibit 135 as a whole shows that this value for rate-making purposes was the result of Spratt's land appraisal plus other appraisals of structures, etc. This furnishes ample support for the quoted sentence.

Govt. brief—p. 53:

> There is nothing in the record to indicate, and it is not to be presumed, that this discrepancy between the appraised value and the sale value applied in any greater or less degree to the land than to the other elements of the property.

Comment. Of course this is a negative statement, and appellant does not call attention to anything in the record which contradicts it.

Govt. brief—p. 58:

> * * * at a time when labor and materials were much cheaper than now, it is obvious that an extremely liberal policy in respect to the determination of fair value was pursued towards appellant.

Comment: Just preceding the portion of the sentence quoted, the Government had made the statement that many of the structures were built more than thirty years ago, citing page 626 of the record which fully supports the statement made. The quoted clause to the effect that labor and materials were much cheaper thirty years ago is a matter, it

is submitted, of which this Court may take judicial notice.

Govt. brief—p. 61:

> That Henrici used the personal inspection method prior to the first hearing in 1929 is clearly established by the evidence (R. 214).

Comment: On page 214 of the record Mr. Henrici testified as to the method he employed in reaching percent condition as expressed in Government Exhibit 4–I or "in the revised Government figures," and from his explanation of his method it is clear that he used the personal inspection method. Mr. Henrici at the first hearing was not cross-examined as to whether he made a personal inspection, as everybody concerned at the hearing knew that he had made such an inspection, and the question was not raised. It should be noted that appellant does not now contend that Mr. Henrici did not make a personal inspection prior to the first hearing, and has not contended in this litigation that Mr. Henrici did not personally inspect the premises prior to the first hearing.

Govt. brief—p. 63:

> Although the Government offered these men as witnesses * * *.

Comment: This matter is fully covered by the stipulation at pages 944–945 of the record.

Govt. brief—p. 66:

> Inasmuch as Henrici had carefully inspected appellant's property prior to the

> first hearing and had given his independent judgment upon its condition * * *.

Comment: This has already been covered by the comment on the sentence quoted from page 61 of the Government brief, *supra,* and by reference to page 214 of the record.

Govt. brief—p. 68:

> * * * the Secretary adopted valuations of the structural properties as a whole which were based upon the fact of their successful operation * * *.

Comment: Appellant has merely extracted a portion of a sentence, and if the remainder of the sentence had been quoted, it would have been seen that a record reference was cited. The reference cited was to page 112 of the record where the Secretary expressly states that his valuation includes a large amount for going concern value, which is inextricably interwoven with other values. At the beginning of the paragraph from which the quoted sentence is taken the Government cited pages 107–112 of the record as fully describing the Secretary's treatment of going concern value, and from which it is clear that the Secretary did value appellant's property as a successfully operating concern.

Govt. brief—p. 88:

> Indeed, the valuation adopted is the value of a plant in successful operation * * *.

Comment: The sentence quoted is introductory to a discussion of the evidence which the Govern-

ment believes fully establishes that the valuation adopted is the value of a plant in successful operation. This evidence is fully discussed at pages 89 to 94 of the Government's brief.

Govt. brief—p. 91:

> It is clear that Henrici regarded his valuation as embodying the element of going concern value.

Comment: The above sentence follows immediately a quotation at page 90 of the Government's brief from Mr. Henrici's testimony, such quotation taking up nearly a full page in the brief. The quotation from Mr. Henrici's testimony is found at page 439 of the record, as the Government's brief at page 90 shows.

Govt. brief—p. 91:

> Thus in ascertaining value the Secretary has adopted a method which allows a substantial increment over and above actual cost.

Comment: This sentence is in the nature of a summary of the manner in which the Secretary has made allowance for the element of going concern value, and it relates to the discussion of the evidence which both precedes and follows the sentence quoted. If this sentence is read in the context of the several page discussion of going concern value in which it occurs, there can be no doubt that it is a fair statement of what the record shows the Secretary did.

Govt. brief—p. 96:

> For example, the roof of the hog yards was replaced at a cost of $4,445.93, and the roof of the sheep shed was replaced at a cost of $3,232.43 (Gov. Ex. 121–A, pp. 254, 4).

Comment: Page 4 of Government Exhibit 121–A shows the charges made on account of repairs for the different types of structures during the years covered by the record. Among these items is one for the year 1928 in the amount of $31,258.17 for yard structures and fences. The analysis of this item on page 254 of the same Exhibit shows that it includes a charge of $4,445.93 for a hog yard roof and $3,232.43 for a sheep shed roof.

Govt. brief—p. 96:

> A study of the company's annual expenditures for repairs and maintenance discloses that they include many replacements.

Comment: This statement is supported by the record at pages 446–447, particularly where the witness said: "All other items that came to my mind are susceptible to the definition of replacements rather than repairs."

Govt. brief—p. 97:

> The Secretary's estimate of the amount annually needed for repairs and replacements was based first of all upon a study of the actual amounts expended over a long period of years by appellant and charged to the repair account. The figures are as follows:

Year	Total	Year	Total
1918	$40,484.37	1927	$39,000.48
1919	72,131.89	1928	45,679.60
1920	52,829.69	1929	43,516.51
1921	29,172.07	1930	29,500.12
1922	38,560.57	1931	24,965.34
1923	48,350.88	1932	19,793.79
1924	47,072.47		
1925	42,391.99	Total	629,066.81
1926	55,686.04	Yearly average	41,937.78

Comment: The figures in the above table for the years 1922 to 1931, inclusive, are shown in Government Exhibit 121–A, pages 338–342, which is cited at page 97 of the Government's brief. The figure for 1932 is obtained by adding the figure shown for the first eight months of 1932 at page 339 of Government Exhibit 121–A and the figures shown for September 1932 in Government Exhibit 121–B, page 4, and the figures shown for October, November, and December of that year in Government Exhibit 121–C, pages 5 and 6. As for the years 1918–1921, it is regretted that due to an oversight these figures were cited, whereas they are actually to be found only in Government Exhibit 12, page 14, which Exhibit was introduced in the first hearing before the Secretary, but was not certified as part of the record to this Court. However, if the four years, 1918–1921, are excluded from the table, the yearly average expended for repairs and replacements charged to the repair account would be less than the yearly average shown on the above table. If the four years 1918–1921 are excluded from the above table, the yearly average expended

for repairs and replacements charged to the repair account would be $39,496.16 instead of $41,937.78 as shown by the above table. The effect, therefore, of the inadvertent inclusion in the above table of the experience of four years not shown in the record certified to this Court (although shown in the Exhibit introduced before the Secretary at the first hearing) is to show a higher yearly average expenditure for repairs and replacements charged to the repair account than would be shown if those four years were excluded, and appellant therefore has not been prejudiced by this inadvertence.

Govt. brief—p. 97:

> There are also included in these repairs certain items of expense for replacements, such as replacement of the roof on the hog yards and the sheep shed previously discussed.

Comment: This has already been covered in the comment on the first sentence challenged by appellant on page 96 of the Government's brief.

Govt. brief—p. 98:

> * * * although deductions for retirements shown on the books do not in all cases represent actual loss because they represent gross and not net retirements. Some of the properties retired were sold or traded for new and similar assets, so that the net retirements would not be as great as is indicated.

Comment: At page 103 of the Government's brief it is stated that the gross value of the retire-

ments for all property for the years 1916 to 1932 was $239,550.80, and page 453 of the record is cited in support. At page 104 of the Government's brief it is shown that there was charged to depreciation reserve for net retirements only $116,405.86, and this is also shown by the table at page 98 of the Government's brief. At page 104 of the Government's brief it is also stated that there was charged to surplus for retirements $54,896.85, and record references are cited in support. The net retirements of $116,405.86 charged to the depreciation reserve plus the amount of $54,896.85 charged to surplus for retirements amounts to a total of $171,302.71. If this amount is subtracted from the gross retirements of $239,550.80 the result is $68,248.09, which represents the value realized from the sale of property retired. The sentence quoted above from page 98 of the Government's brief is also further supported by the testimony at page 453 of the record.

Govt. brief—p. 103:

> The property in the pen areas is kept in proper operating condition by ordinary repairs and piecemeal replacements. The reproduction new cost of this part of the property is about one-half of the reproduction cost of the entire property—or approximately $1,500,000.

Comment: After the sentence on page 103 of the Government's brief which immediately follows the

sentence quoted above, page 458 of the record is cited. The testimony at page 458 fully supports the sentence quoted, as the witness there testified that pens and fences come under the classification of assets which are maintained indefinitely by repairs, at least by repairs as classified on the books of this company; also, that the value of the pens and fences amounts to about a million and a half dollars.

Govt. brief—p. 103:

> This amount includes retirements for fire losses which were covered by insurance (R. 453).

Comment: The reference to page 453 of the record may be supplemented by reference to Government Exhibit 121A, pages 357–358, which shows the insurance carried on the various properties of appellant, indicating the general policy of appellant to carry insurance on all its property. Government Exhibit 124, page 18, which is an analysis of the surplus for the years 1916–1932, shows an item of gain from fire settlements, etc.

Govt. brief—p. 106:

> Line in table shows dividend of $187,500 for 1932.
>
> Government ex. 121–A, p. 10, shows dividend 1932, $112,000, or $3.00 per share.

Comment: Government Exhibit 121–A, page 10, should be supplemented for the year 1932 by Government Exhibit 121–C, page 3, which shows the

dividends for the full year 1932 to be $187,500. The amount $112,000 shown by Government Exhibit 121–A, page 10, is only for the first six months of the year, whereas, Government Exhibit 121–C shows the dividends for the full year to be $187,500.

Govt. brief—pp. 114–115:

> The record in the instant case clearly demonstrates that appellant's property has reached a normal operating condition—a condition in which the expense required for repairs and replacements has for some years been, and may in the future be expected to be, fairly static.

Comment: The sentence quoted immediately precedes a two-page discussion of the evidence which includes extracts quoted from the record that clearly show that appellant's property has reached a normal operating condition, with a reasonable expectation that the requirements for repairs and replacements will for some years be fairly static.

Govt. brief—p. 115:

> The stockyard was built sometime during the 1890's and has been rendering continuous service since that time (R. 626).

Comment: Reference to page 626 of the record shows that a substantial amount of the construction had been completed and that the stockyards was being operated in the 1890's. On page 116 of the Government's brief testimony is quoted indicating that the stockyard has been operating since

1898, and citation for this is given to R. 357. Appellant does not contend that the stockyards has not been rendering continuous service since that time.

Govt. brief—p. 116:

> A consulting engineer who testified for appellant at the second hearing said that appellant's property had "about reached the turnover stage" and that this applied to the "stockyards" buildings, and improvements, which include the pen areas" (R. 723).

Comment: It is submitted that the reference to page 723 of the record fully supports the statement made. Moreover, immediately following the quoted sentence the Government has quoted verbatim the testimony of the witness from page 723 of the record. (See Government's brief, pp. 116–117.)

Govt. brief—p. 121:

> * * * it appears from appellant's books that this charge was not always imposed (R. 569).

Comment: The testimony at pages 569–570 of the record should be supplemented by the testimony of appellant's President and General Manager, at page 826 of the record. (This testimony at page 826 of the record is cited in the part of the sentence which appellant omitted.) The President and General Manager testified that appellant did not collect yardage on resales of livestock in the Commission Division to go to the country. He further said that

the destination to the country for feeding "relieves the sale of this re-yardage, no matter how it is sold to the country."

Govt. brief—pp. 121–122:

> * * * was unreasonable and constituted unjust discrimination (R. 128).

Comment: Appellant contends that this statement is not supported by the reference given, which appellant contends relates only to feedlot yardage. The Government contends, however, that the secretary at page 128 of the record found that the whole schedule, including the resale and reweigh charge, was unreasonable and unjustly discriminatory. See also the paragraph in the middle of page 130 of the record.

Govt. brief—p. 137:

> Lack of sufficient return from the operation of the feedlots was reflected in a reduced net income for appellant, with the resulting need for higher rates for other services.

Comment: This statement is fully justified when read in the context of the discussion from which it is taken.

Govt. brief—p. 137:

> * * * an analysis was made to determine the value upon which the feedlots should yield a fair return.

Comment: It is true that the Secretary has not set up in the order the mathematical calculations

which appear at pages 137–139 of the Government's brief, but these calculations are all made from matters in the record and record references in the brief amply support the figures forming the basis of the calculation.

Govt. brief—p. 137:

> Relating the square foot area of the feedlots in each zone to the square foot land value thereof, it is found that the value of the land occupied by the feedlots is $211,660.

Comment: Reference to page 137 of the Government's brief shows that there is a footnote explanatory of the figure in the above sentence, and the footnote shows from which Government Exhibits the figures used therein were derived.

Govt. brief—p. 138:

> * * * making the total cost of reproduction new less depreciation of structures, plus the value of the land used for these facilities, $369,192.

Comment: The figure $369,192 is the result of a calculation which is spelled out in detail in the paragraph immediately preceding.

Govt. brief—p. 138:

> The taxes and insurance properly allocable to the feedlot lands and structures were about $6,336 (Gov. Exs. 121A, 121B, 121C).

Comment: The calculation showing the allocation of taxes and insurance to the feedlot lands

and structures to be about $6,336 was made from the detailed analyses of insurance and of state, county, and city taxes found at pages 348–375 of Government Exhibit 121–A, pages 11 and 12 of Government Exhibit 121–B, and pages 13 and 30 of Government Exhibit 121–C.

Govt. brief—p. 138:

> Many of these structures are substantial in character and a large portion of the land is located within the limits of the city of St. Joseph and must, therefore, carry a higher tax rate than lands located outside the limits. The details upon which the segregation of such taxes and insurance were made will be found on pages 348–375 of Government Exhibit 121A.

Comment: The references relative to the basis for computing insurance and taxes allocable to feedlots are given in the last preceding comment. That many of the feedlot structures are substantial in character would seem to be self-evident, but in any event it is supported by the footnote on page 138 of the Government's brief showing the value of such structures. As for the statement that some of the land lies within the city limits of St. Joseph, that fact is shown by Government Exhibit 128, pages 38–40 inclusive, in which it appears that zones one, two, and three lie within the city limits (that is, in South St. Joseph Town Company's 2nd and 3rd Editions) and the Secretary's description of

the feedlots shows that a considerable portion of the land so used is in zones one, two, and three (R. 66–69).

Govt. brief—p. 160:

> As a matter of fact, during the five-year period, appellant actually expended for repairs only $156,096, or $36,404 less than the amount allowed for that purpose by the Secretary.

Comment: The item of $156,096 is the total of the expenditures for repairs during the five-year period 1927–1931, inclusive (R. 120A), from which have been eliminated expenditures for repairs attributable to property found by the Secretary not to be used and useful, and the replacement of the hog house roof, the sheep shed roof, and certain replacements on the quarantine scale house, which were regarded as replacements rather than repairs. The difference between this figure and those in the table at page 97 of the Government's brief is due to the fact that the table covers all repairs made by appellant on all property owned by it, whereas the calculation at page 160 of the Government's brief relates only to repairs on used and useful property.

Govt. brief—p. 161:

> Appellant annually received in normal course recurring refunds on casualty insurance, which for the five-year period amounted to $31,816 (Gov. Ex. 121A, p. 7, line 8), and which appellant has not included

in its calculation either as income or as a decrease in expense.

Comment: Reference to Government Exhibit 121–A, page 7, line 8, shows the additions to surplus on account of dividends from casualty insurance for each year 1927 to 1931 inclusive. The sum of the figures shown for these five years is $31,816.

Govt. brief—p. 161:

> Based on appellant's experience for the years 1931–1932 there would have been an increase in appellant's revenue for the five-year period of $108,428 if appellant had applied the maximum rates for resales and reweighs permitted by the Secretary's order to all the business permitted by that order (Gov. Exs. 121A, p. 60; 121B, p. 7; 121C, p. 14; 122; 122A).

Comment: The Government Exhibits cited show the volume of resales and reweighs in 1931 and 1932 to which the Secretary's rates would have been applicable. The volume of livestock to which the resale and reweigh charge would have been applicable was fully discussed at pages 120–132 of the Government's brief. Assuming that the experience of 1931 and 1932 was typical of the five-year period, if the Secretary's rates had been fully applied to the business of such period there would have been an increase in appellant's revenue during the full period of $108,428.

Govt. brief—p. 176:

> The Secretary properly recognized that in addition to the cost of rendering services, the value of the services should be considered.

Comment: This is a reasonable inference from the findings and order of the Secretary as a whole.

Respectfully submitted,

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FEBRUARY 1936.

U. S. GOVERNMENT PRINTING OFFICE: 1936

p. 9

concurring - pp. 7-16, 1, 9, 13, 14, 15

SUPREME COURT OF THE UNITED STATES.

No. 497.—October Term, 1935.

St. Joseph Stock Yards Company, Appellant, *vs.* United States of America and the Secretary of Agriculture.	Appeal from the District Court of the United States for the Western District of Missouri.

[April 27, 1936.]

Mr. Chief Justice Hughes delivered the opinion of the Court.

This suit was brought by St. Joseph Stock Yards Company to restrain the enforcement of an order of the Secretary of Agriculture fixing maximum rates for the Company's services. The District Court composed of three judges dismissed the bill of complaint (11 F. Supp. 322) and appeal lies directly to this Court. 7 U. S. C. 217; 28 U. S. C. 47.

In October, 1929, the Secretary of Agriculture initiated a general inquiry into the reasonableness of appellant's rates. After hearing, the Secretary prescribed maximum rates which were enjoined by the District Court. *St. Joseph Stock Yards Co.* v. *United States,* 58 F. (2d) 290. The Secretary reopened the proceeding and hearing was had in 1933. While the matter was under consideration, appellant filed in February, 1934, a petition for a further hearing. On May 4, 1934, the Secretary denied the petition and made the order now in question.

The validity of the provisions of the Packers and Stockyards Act, 1921 (42 Stat. 159, 7 U. S. C. 181-229) authorizing the Secretary of Agriculture to prescribe maximum charges for the services of stock yards has been sustained. *Stafford* v. *Wallace,* 258 U. S. 495; *Tagg Bros. & Moorhead* v. *United States,* 280 U. S. 420. In this suit, appellant attacked the Secretary's order as lacking the support of essential findings, and also as confiscatory, thus violating the Fifth Amendment of the Federal Constitution. The denial of the request for a further hearing was assailed. No additional evidence was introduced in the District Court and the case was submitted at the final hearing upon the record made before the Secretary.

First.—The Secretary's findings.—The findings are elaborate. They include detailed findings with respect to the services rendered by appellant and its rates, the used and useful character of appellant's property, the valuation of used and useful land, the value of appellant's structures on the basis of cost of reproduction new less depreciation, working capital, going concern value, fair value on the basis of the facts found, fair rate of return, reasonable operating expenses (including repairs, depreciation and taxes), necessary revenue and volume of business. The Secretary found that the existing rates produced revenues in excess of those necessary to pay reasonable expenses and afford a fair return; that "the schedule of rates and charges now in effect is unreasonable and unjustly discriminatory".

As a guide to his determination of reasonable rates, the Secretary caused an analysis to be made of the books and records of the appellant covering the six-year period from 1927 to 1932. He reached his conclusion in the light of that evidence. Appellant contends that, as a prerequisite to a reduction of rates, it was necessary for the Secretary to find that the rates were unreasonable "at the time of the hearing", and that there were no findings to support such a conclusion with respect to the year 1932, the year immediately preceding the hearing. But in determining whether the existing rates were unreasonable, the Secretary was not confined to evidence as to their operation at the precise time of his hearing, or in the months, or even a year, immediately prior thereto. He was entitled to consider the conditions which then obtained and also to extend his examination over such a reasonable period of past operations as would enable him to make a fair prediction in fixing the maximum rates to be charged in the future. The Secretary had before him the particular conditions which prevailed in the year 1932 and in the selection of the six-year period including that year, and in not taking the year 1932 as a sole criterion, we find nothing arbitrary. There are also objections to the failure of the Secretary to make specific findings on certain points of fact, but, so far as the requirement of findings is concerned, we think that the extensive findings that were made adequately supported his order.

Second.—The refusal of the Secretary to reopen the proceeding.—The hearing was closed on February 16, 1933. In the following January, a copy of the proposed order was transmitted to counsel

for appellant and opportunity was given to file exceptions. Numerous exceptions were filed and at the same time (February, 1934) appellant asked for a further hearing upon the ground that there had been such a serious change in conditions affecting the value of the Company's property, its income, and the probable receipts of live stock and expenses of its yards, that the record no longer fairly reflected these matters. The application pointed to the Agricultural Adjustment Act of May 12, 1933, the National Industrial Recovery Act of June 16, 1933, and the Gold Reserve Act of January 30, 1934,—all as producing changes of which account should be taken. Appellant also alleged that its books and records were available to give the complete results of its operations for the year 1933, which showed a lower net operating income than that stated in the Secretary's proposed report. The Secretary heard argument, made an informal investigation, and denied the application. He was careful to say that, while as a result of his investigation he found no adequate ground for reopening the proceeding, he did not use the facts thus elicited as a part of the record upon which his determination of rates was based. After stating what he deemed to be comparative results of operations in 1933, and in January and February, 1934, the Secretary gave as the general grounds for his action that it was inevitable that in such determinations considerable time must be consumed and that there would be some economic change; that appellant had obtained one rehearing because the first hearing had been followed by a general business depression which adversely affected its gross revenues; that it sought another because since the last hearing there had been a general improvement in those conditions; that in determining the values used as a rate base, "depression or stagnation values" had carefully been avoided and "normals" used; that the prescribed rates which the Secretary deemed to be fair at that time would "as the economic improvement continues, become liberal"; that the matter had been "in hearing and litigation since the year 1929" and the time had come for decision.

The decree of the District Court was filed on May 1, 1935. Despite the opportunity which the suit afforded, the record shows no endeavor on the part of appellant to prove any additional facts as to the conditions which obtained in 1933, or as to its operations in that year or at any time down to the hearing in the District Court, or as to any matter outside the record which had been made before

the Secretary. The court concluded that the effect of the legislation of 1933 was speculative; that the difference between the amount which appellant claimed would have been earned under the prescribed rates, if applied to the business of 1933, and the amount found by the Secretary to constitute the reasonable net return, was "too small to be taken as a guide for a rate"; that in order "to gauge the future", the Secretary had taken six years, "two of which were deeply affected by the depression", and that the experience before the Secretary "was up to ten days before the date of the hearing". In that view the court decided that the proceeding should not be reopened and that the question of the effects urged by appellants in that relation should await the test of actual experience upon which, if sufficient reasons were shown, the Secretary's order could be challenged. 11 F. Supp. p. 325. We find no error in that conclusion. If it be found that the rates as prescribed were not confiscatory, we see no reason for holding the Secretary's order to be ineffective because of his refusal to reopen the proceeding. *United States* v. *Northern Pacific Railway Company,* 288 U. S. 490.

Third.—The scope of judicial review upon the issue of confiscation.—The question is not one of fixing a reasonable charge for a mere personal service subject to regulation under the commerce power, as in the case of market agencies employing but little capital. See *Tagg Bros. & Moorhead* v. *United States, supra,* pp. 438, 439. Here, a large capital investment is involved and the main issue is as to the alleged confiscation of that investment.

A preliminary question is presented by the contention that the District Court, in the presence of this issue, failed to exercise its independent judgment upon the facts. 11 F. Supp. pp. 326-328. See *Ohio Valley Water Co.* v. *Ben Avon Borough,* 253 U. S. 287, 289; *Prendergast* v. *New York Telephone Co.,* 262 U. S. 43, 50; *Bluefield Company* v. *Public Service Commission,* 262 U. S. 679, 689; *United Railways* v. *West,* 280 U. S. 234, 251; *Tagg Bros. & Moorhead* v. *United States, supra,* pp. 443, 444; *Phillips* v. *Commissioner,* 283 U. S. 589, 600; *Crowell* v. *Benson,* 285 U. S. 22, 60; *State Commission* v. *Wichita Gas Co.,* 290 U. S. 561, 569. The District Court thought that the question was still an open one under the Packers and Stockyards Act, and expressed the view that, even though the issue is one of confiscation, the court is bound to accept the findings of the Secretary if they are supported by substantial

evidence and that it is not within the judicial province to weigh the evidence and pass upon the issues of fact. The Government points out that, notwithstanding what was said by the court upon this point, the court carefully analyzed the evidence, made many specific findings of its own, and in addition adopted, with certain exceptions, the findings of the Secretary. The Government insists that appellant thus had an adequate judicial review and, further, that the case is in equity and comes before the court on appeal, and that from every point of view the clear preponderance of the evidence shows that the prescribed rates were in fact just and reasonable. Hence, the Government says that the decree should be affirmed irrespective of possible error in the reasoning of the District Court. See *West* v. *Chesapeake & Potomac Telephone Co.*, 295 U. S. 662, 680.

In view, however, of the discussion in the court's opinion,[1] the preliminary question should be considered. The fixing of rates is a legislative act. In determining the scope of judicial review of that act, there is a distinction between action within the sphere of legislative authority and action which transcends the limits of legislative power. Exercising its rate-making authority, the legislature has a broad discretion. It may exercise that authority directly, or through the agency it creates or appoints to act for that purpose in accordance with appropriate standards. The court does not sit as a board of revision to substitute its judgment for that of the legislature or its agents as to matters within the province of either. *San Diego Land & Town Co.* v. *Jasper*, 189 U. S. 439, 446; *Minnesota Rate Cases*, 230 U. S. 352, 433; *Los Angeles Gas Co.* v. *Railroad Commission*, 289 U. S. 287, 304. When the legislature itself acts within the broad field of legislative discretion, its determinations are conclusive. When the legislature appoints an agent to act within that sphere of legislative authority, it may endow the agent with power to make findings of fact which are conclusive, provided the requirements of due process which are specially applicable to such an agency are met, as in according a fair hearing and acting upon evidence and not arbitrarily. *Interstate Commerce Commission* v. *Louisville & Nashville R. R. Co.*, 227 U. S. 88, 91; *Virginian Railway Co.* v. *United States*, 272 U. S. 658,

[1] See, also, Denver Union Stock Yard Co. *v.* United States, 57 F. (2d) 735, 739; St. Joseph Stock Yards Co. *v.* United States, 58 F. (2d) 290, 295; Union Stock Yards Co. *v.* United States, 9 F. Supp. 864, 875; American Commission Co. *v.* United States, 11 F. Supp. 965, 969.

663; *Tagg Bros. & Moorhead* v. *United States, supra,* p. 444; *Florida* v. *United States,* 292 U. S. 1, 12. In such cases, the judicial inquiry into the facts goes no further than to ascertain whether there is evidence to support the findings and the question of the weight of the evidence in determining issues of fact lies with the legislative agency acting within its statutory authority.

But the Constitution fixes limits to the rate-making power by prohibiting the deprivation of property without due process of law or the taking of private property for public use without just compensation. When the legislature acts directly, its action is subject to judicial scrutiny and determination in order to prevent the transgression of these limits of power. The legislature cannot preclude that scrutiny or determination by any declaration or legislative finding. Legislative declaration or finding is necessarily subject to independent judicial review upon the facts and the law by courts of competent jurisdiction to the end that the Constitution as the supreme law of the land may be maintained. Nor can the legislature escape the constitutional limitation by authorizing its agent to make findings that the agent has kept within that limitation. Legislative agencies, with varying qualifications, work in a field peculiarly exposed to political demands. Some may be expert and impartial, others subservient. It is not difficult for them to observe the requirements of law in giving a hearing and receiving evidence. But to say that their findings of fact may be made conclusive where constitutional rights of liberty and property are involved, although the evidence clearly establishes that the findings are wrong and constitutional rights have been invaded, is to place those rights at the mercy of administrative officials and seriously to impair the security inherent in our judicial safeguards. That prospect, with our multiplication of administrative agencies, is not one to be lightly regarded. It is said that we can retain judicial authority to examine the weight of evidence when the question concerns the right of personal liberty. But if this be so, it is not because we are privileged to perform our judicial duty in that case and for reasons of convenience to disregard it in others. The principle applies when rights either of person or of property are protected by constitutional restrictions. Under our system there is no warrant for the view that the judicial power of a competent court can be circumscribed by any legislative arrangement designed to give effect to administrative action going beyond the limits of constitutional authority.

This is the purport of the decisions above cited with respect to the exercise of an independent judicial judgment upon the facts where confiscation is alleged. The question under the Packers and Stockyards Act is not different from that arising under any other act, and we see no reason why those decisions should be overruled.

But this judicial duty to exercise an independent judgment does not require or justify disregard of the weight which may properly attach to findings upon hearing and evidence. On the contrary, the judicial duty is performed in the light of the proceedings already had and may be greatly facilitated by the assembling and analysis of the facts in the course of the legislative determination. Judicial judgment may be none the less appropriately independent because informed and aided by the sifting procedure of an expert legislative agency. Moreover, as the question is whether the legislative action has passed beyond the lowest limit of the permitted zone of reasonableness into the forbidden reaches of confiscation, judicial scrutiny must of necessity take into account the entire legislative process including the reasoning and findings upon which the legislative action rests. We have said that "in a question of rate-making there is a strong presumption in favor of the conclusions reached by an experienced administrative body after a full hearing". *Darnell* v. *Edwards,* 244 U. S. 564, 569. The established principle which guides the court in the exercise of its judgment on the entire case is that the complaining party carries the burden of making a convincing showing and that the court will not interfere with the exercise of the rate-making power unless confiscation is clearly established. *Los Angeles Gas Co.* v. *Railroad Commission,* 289 U. S. 287, 305; *Lindheimer* v. *Illinois Telephone Co.,* 292 U. S. 151, 169; *Dayton Power & Light Co.* v. *Public Utilities Commission,* 292 U. S. 290, 298.

A cognate question was considered in *Manufacturers Railway Company* v. *United States,* 246 U. S. 457, 470, 488-490. There, appellees insisted that the finding of the Interstate Commerce Commission upon the subject of confiscation was conclusive, or at least that it was not subject to be attacked upon evidence not presented to the Commission. We did not sustain that contention. Nevertheless, we pointed out that correct practice required that "in ordinary cases, and where the opportunity is open", all the pertinent evidence should be submitted in the first instance to the Commission. The Court did not approve the course that was pur-

sued in that case "of withholding from the Commission essential portions of the evidence that is alleged to show the rate in question to be confiscatory". And it was regarded as beyond debate that, where the Commission after full hearing had set aside a given rate as unreasonably high, it would require a "clear case" to justify a court, "upon evidence newly adduced but not in a proper sense newly discovered", in annulling the action of the Commission upon the ground that the same rate was so unreasonably low as to deprive the carrier of its constitutional right of compensation. With that statement, the Court turned to an examination of the evidence. The principle thus recognized with respect to the weight to be accorded to action by the Commission after full hearing applies *a fortiori* when the case is heard upon the record made before the Commission or, as in this case, upon the record made before the Secretary of Agriculture. It follows, in the application of this principle, that as the ultimate determination whether or not rates are confiscatory ordinarily rests upon a variety of subordinate or primary findings of fact as to particular elements, such findings made by a legislative agency after hearing will not be disturbed save as in particular instances they are plainly shown to be overborne.

As the District Court, despite its observations as to the scope of review, apparently did pass upon the evidence, making findings of its own and adopting findings of the Secretary, we do not think it necessary to remand the cause for further consideration and we turn to the other questions presented by the appeal.

Fourth.—Valuation of property, income, expenses, and fair return.—The Secretary found that the fair value of appellant's property, used and useful in its stock-yards service, to be $2,743,000. The District Court made certain additions of land which the Secretary had excluded from his appraisal, arriving at a rate base of $2,752,964. The Secretary found seven percent. to be a reasonable rate of return, which would mean net earnings of $192,010 on his rate base, or $192,710 on that of the court below. The Secretary estimated that under the prescribed rates appellant's net income available for return upon its investment would be $195,564 or 7.13 percent. on his valuation.

Elaborate briefs have discussed a host of details in attacking and defending these estimates. While we have examined the evi-

dence and appellant's contentions on each point, it is impracticable to attempt in this opinion to state more than our general conclusions.

1.—*Property values.*—For the purpose of demonstrating that its rates were not unreasonable prior to 1932, appellant states that it adopts the findings of the Secretary in his first decision as to the total value of its property. That value was then fixed at $3,382,148, to which appellant adds the value of certain additional land now found to be used and useful, $329,163, giving a total value, which appellant says is applicable to the years 1927-1931, of $3,711,311. But the first hearing was begun and concluded in December, 1929, and while the order was not promulgated until July 20, 1931, it was predicated, as the District Court said in reviewing that order, upon the value of the property as of the year 1928 and the volume of business during that year. *St. Joseph Stockyards Co.* v. *United States,* 58 F. (2d) p. 291. Appellant insisted in its bill of complaint in the first suit that the Secretary's denial of its request for reopening was arbitrary, as economic conditions had materially changed since 1928. The District Court, applying the principle of our decision in *Atchison, Topeka & Santa Fe Railway Co.* v. *United States,* 284 U. S. 248, held that a rehearing should have been granted. 58 F. (2d) pp. 296, 297. The Secretary then vacated his prior order and reopened the proceeding. There is no question of *res judicata. Tagg Bros. & Moorhead* v. *United States, supra,* p. 445; compare *Clark's Ferry Bridge Co.* v. *Public Service Commission,* 291 U. S. 227, 233. Appellant could not obtain an examination of the changed conditions with respect to its income and outlays in the period after 1928 and at the same time insist that the change in values due to the depression should be ignored.

Appellant provides the physical facilities for a market and renders various services in connection with livestock. It supplies office buildings, docks for loading and unloading, "chute pens", "sales pens" and alleys, and the various appurtenances for the proper care of livestock that are essential to its service in warehousing. The property thus consists of land and various structures.

Value of land.—The Secretary found that of the land owned by appellant there were 4,410,361 square feet used and useful in its stockyards services. The District Court added 122,041 square feet. 11 F. Supp. 336. Appellant complains, on this appeal, of the exclusion of the property known as the "Transit House" and of the

value assigned to the property which was included in the rate base.

The "Transit House" is a commercial hotel (occupying 15,805 square feet of land) with a limited patronage supplied by shippers and drivers of trucks. Appellant claims that the land and building are worth $120,143. Appellant points to the ruling of the Secretary in the first proceeding that the hotel should be considered a part of the used and useful property in the stockyards service. In his second decision, now under review, the Secretary found that the hotel was constructed many years ago when transportation facilities between the stockyard area and the "main-uptown" area were limited; that at the time of the first hearing the hotel was leased for a rental of $1200 a year, and that the business had not warranted an increase, as provided in the lease, up to the time of the second hearing; that the decadence of the property had resulted principally from the development of good roads and the use of motor vehicles and the street car system of the city of St. Joseph, as well as from the change in the method of marketing livestock. It did not appear that the hotel produced enough revenue to pay taxes, insurance and upkeep, to saying nothing of a return on its alleged value, and it is plain that if its value were to be included in the rate base the effect would be to levy an annual charge upon the patrons of the yards, principally the original shippers, in order to maintain hotel facilities on a non-compensatory basis for the special benefit of the truck drivers and others who patronized it.

The District Court held that it would have to be shown very clearly that the business of the yards would be materially affected by the absence of a nearby hotel before it could be said that its maintenance was so related to the stockyards business as to be properly included in fixing the rate for yard services. The court said that there was no such showing. We take the same view.

The land found to be used and useful is divided into several zones. Appellant assigns error in valuation only in the case of Zone A, in which, however, 70 per cent. of the used and useful land or 3,003,973 square feet, is included. The Secretary valued this land at 16 cents per square foot, or at $480,635. Appellant contends that it is worth at least $275,164 more, which would be at the rate of about 25 cents a square foot.

Expert witnesses for both parties testified at length. At the first hearing, in 1929, two witnesses for appellant valued the land

in Zone A at 30 cents per square foot. The witness for the Government valued it at 35 cents, predicated upon its particular value for stockyard use; otherwise at 20 cents. Before the second hearing, in 1933, two of these witnesses had died. The surviving witness for appellant again testified giving a value, as of August, 1932, of 26 cents per square foot, and a second witness for appellant thought it worth 35 cents. The new witness for the Government placed the value as of November, 1932, at $5000 an acre, or about 11½ cents per square foot.

All the witnesses were highly qualified experts. Their valuations were of the naked land, without improvements. The three witnesses at the second hearing had collaborated in examining about 147 different transactions relating to property in the general vicinity, but they reached independent conclusions. The Government's witness attached special weight to five sales, or groups of sales, made at different times from 1918 to 1930 at prices as low or lower than the valuation he fixed. Appellant points to other transfers at other locations at higher prices. Manifestly these transactions involved collateral inquiries and in the end simply afforded information of varying significance to aid the forming of an expert judgment. Appellant recognizes the impracticability of attempting to analyze "the rather involved transfers and locations in an attempt to determine the truth as between the land appraisers." Accordingly, appellant seeks to demonstrate that the Secretary's finding is vitiated by what is asserted to be his reliance upon an erroneous analysis of a sale by appellant, in 1929, of the entire capital stock of a terminal belt railway company which served the stockyards and the adjacent industrial area. It is said that none of the expert witnesses based their appraisals upon that transaction. We think that appellant overestimates the relative weight given to it by the Secretary and fails to take proper account of the effect of its use. The Secretary found that the valuation by the Government's witness at 11½ cents per square foot was "well supported by analysis of transactions in adjacent and similar lands", but the Secretary thought that the witness had failed to give consideration to the belt railway sale. That led the Secretary to give a higher valuation than that of the Government's witness. And on all the evidence the Secretary fixed the value at 16 cents per square foot which he said did not represent "depression or stagnation value" but constituted "the reasonable normal value of the land giving weight to values

existing immediately preceding as well as those existing during the present depression".

The weight to be accorded to the testimony of the experts cannot be determined without understanding their approach to the question and the criteria which governed their estimates. The testimony of appellant's witnesses shows quite clearly that they proceeded, in part at least, upon an erroneous basis. The Packers and Stockyards Act treats the various stockyards of the country "as great national public utilities to promote the flow of commerce from the ranges and farms of the West to the consumers in the East". It assumes that "they conduct a business affected by a public use of a national character and subject to national regulation". *Stafford* v. *Wallace, supra,* p. 516. Appellant, conducting such a business, was entitled to be allowed in the fixing of its rates the fair market value of its land for all available uses and purposes, which would include any element of value that it might have by reason of special adaptation to particular uses. But it was not entitled to an increase over that fair market value by virtue of the public use. *Minnesota Rate Cases,* 230 U. S. 352, 451, 455; *Clark's Ferry Bridge Co.* v. *Public Service Commission, supra,* p. 238. We think that appellant's witnesses failed to give proper heed to this principle. Their testimony indicates that they did not consider simply the availability of the land for all uses and purposes, including its availability for a stockyard, but attached special weight to the actual and profitable public use. They apparently included in their estimates an increment of value, by virtue of that use, which is inadmissible in a proceeding to determine the reasonable rates to be charged for the public service.

The point is illustrated by the difference in their estimate of the value of the land in Zone B. That is a tract of about seventeen acres adjoining Zone A. One of appellant's witnesses described the land in Zone B as "of the same character" as that occupied by appellant's hog sheds and that it had equal railroad service. It was said to join that portion of appellant's land which "is actively used in the conduct of its business". The other witness for appellant said that "with respect to topography, rail service and accessibility this ground is much the same as Zone A, which lies immediately to the north". But the first witness placed a value of 13 cents per square foot on the land in Zone B as compared with 26 cents per square

foot on that of Zone A, and the second witness valued the former at 15 cents per square foot and the latter at 35 cents. The first witness said that Zone B was not valued as high as Zone A because "it is not actually in use" by appellant "for the immediate conduct of its business but is in waiting"; that it "had not been brought into its highest and best use" but when it had been brought into that use, it would "be worth just as much as the land in tract A". When we consider that the question was of the fair market value of the bare land in the light of its availability, but without improvements (which were separately valued), the erroneous theory on which appellant's witnesses valued Zone A is apparent. The Secretary fixed the value of the land in Zone A and the similarly available land in Zone B at the same amount.

Our conclusion is that the evidence falls short of that convincing character which would justify us in disturbing the Secretary's finding.

Value of structures.—There appears to be no dispute as to the method of valuation, which was on the basis of cost of reproduction new, less depreciation. The property was inventoried and appraised independently by two qualified engineers, one employed by appellant and the other by the Government. Their estimates of the cost of reproduction new were not very far apart. On that evidence the Secretary found that cost, excluding non-useful property, to be $2,637,186. This included construction overheads, general salaries and expenses, legal expenses, compensation of architects and engineers, fire and tornado insurance, workmen's compensation and public liability insurance, and taxes during construction, making a total of $2,494,043, on the 1927 inventory, which was increased by $143,143 for the additions and betterments to 1932.

Appellant presents no contention as to this valuation but contests the amount deducted by the Secretary for existing depreciation. He took 76.04 per cent. of the cost of reproduction new as representing the depreciated value of the structures and thus his deduction amounted to $597,570. That was close to the estimate of the Government's engineer. Appellant's engineer testified that the present condition was 89 per cent.

Appellant's contention is that there was no evidence to support the Secretary's deduction for existing depreciation and that the only legal evidence on this point was that of appellant's witness.

The precise criticism is that the percentage used by the Government's engineer in his testimony was based on an average of percentages given by five of his assistants, none of whom testified. It appears, however, that the Government's witness had personally inspected the proprty in preparation for the first hearing at which he testified as to the result of the inspection and the methods he adopted. At the second hearing he testified that he followed the principles of his first appraisal in that of 1932, except that he had his five assistant engineers make separate estimates of which he took the average. In answer to appellant's contention as to their failure to testify, the Government produces a stipulation as to the record which shows that when the exhibits covering the appraisal by the Government's witness and the estimates of the assistants were offered in evidence, the Government's counsel stated that if there was any objection upon the ground that they had not testified, the Government would produce any or all of them for cross-examination respecting the exhibits. Later, after an opportunity for an examination of the exhibits by appellant's counsel, they were received in evidence, appellant's counsel stating that no objection was made other than the general one theretofore made, and applicable throughout the proceeding, that the Secretary had no power to find the value of appellant's property. Appellant did not seek to avail itself of the Government's offer to produce the assistants. In these circumstances we find no basis for the argument that the testimony of the Government's witness as to the existing depreciation and the accompanying exhibits should not be considered. The Secretary reviewed the method adopted by appellant's engineer as compared with that of the Government's engineer and reached a reasoned conclusion upon all the evidence. We think that the evidence affords no sufficient ground for upsetting his finding.

The remaining contention affecting the rate base is in relation to going concern value.

Going concern value.—Appellant's witness, who testified at length at both hearings, followed an elaborate method involving assumptions and speculations of the sort which fail to furnish a sound basis for computing a separate allowance for that element. Compare *Galveston Electric Co.* v. *Galveston,* 258 U. S. 388, 394; *Los Angeles Gas Co.* v. *Railroad Commission, supra,* pp. 314, 318, 319;

Dayton Power & Light Co. v. *Public Utilities Commission,* 292 U. S. 290, 309; *Columbus Gas & Fuel Co.* v. *Public Utilities Commission,* 292 U. S. 398, 412. The witness differentiated his method from the "past deficit" method. *Galveston Electric Co.* v. *Galveston, supra.* He styled his method as "the cost of reproduction method of evaluating the business". It compared "to the past deficit method in just exactly the same way that reproduction new of physical property compares to historical cost of physical property". His calculations depended upon assumptions of theoretical future deficits. They involved elaborate guesswork, according to assumed valuations of physical plant, the length of time required for the complete recovery of the business, and the rate of return. At the first hearing he computed the going concern value at $666,666. At the second hearing, by a similar method he made various calculations dependent on assumed valuations of the property, that is, $294,000 on a total valuation of $5,000,000; $358,000 on a valuation of approximately $3,500,000; and about $400,000, or approximately 22½ per cent. of the physical plant value on a valuation of $2,000,000. That is, as he said, "Depending upon the final value as fixed by the Secretary, the going value will range in approximately a straight line variation" between the limits "of 22½ per cent. for a minimum value of $2,000,000, and 6 per cent. or $294,000 for a maximum value of $5,000,000". The Secretary treated such speculations as "in no real sense evidence". We agree with that conclusion.

Appellant contends, however, that the Secretary and the District Court erred in saying that appellant's claim is based wholly upon the testimony of this witness. Appellant strongly relies upon the fact that on the first hearing the Secretary made an allowance of $300,000 for going concern value and that in his answer in the first suit he denied that no evidence upon that subject had been offered on the Secretary's behalf, but on the contrary stated that much evidence was introduced by the Secretary tending to show the value of that element. That answer was made to the allegation that appellant was entitled to an allowance of at least $666,663; and the Secretary further answered that the separate allowance he had made was more than adequate.

The Secretary was not estopped or controlled by the ruling in the first proceeding. He was entitled, and it was his duty, to reexamine the case on the second hearing and to reach the conclusion

which the evidence justified. In that process, he in effect overruled the earlier allowance and left it without force. The question remains one of evidence. The Secretary recognized the fact that there is an element of value in an "established plant doing business and earning money over one not thus advanced". But he thought that in the rate base he had fixed there was an adequate allowance for that element and that it was "inextricably interwoven with other values". The Government's argument in support of this view points to the overheads allowed and emphasizes the fact that the Secretary's method took as his basis reproduction cost "unmodified by considerations of actual or historical cost". It is urged that the Secretary in fact made a liberal valuation which gave a margin large enough to cover the value inherent in a going concern.

We think it unnecessary to review that argument in detail. The decisive point on this appeal is that in seeking a separate allowance for going concern value, in addition to the value of the physical plant as found, and in maintaining that the property was being confiscated because of the absence of that allowance, it was incumbent upon appellant to furnish convincing proof. That proof we do not find in the record.

Operating expenses.—The point of contention is the annual allowance for depreciation reserve. The argument that the Secretary was without authority to prescribe the amount of this allowance is obviously ineffectual. In fixing reasonable rates for the stockyards service it was necessary for the Secretary to ascertain the outlays which that service would require and the amount which should reasonably be reserved out of income to cover depreciation in the property used. It was also necessary for the Secretary in estimating the latter allowance to examine the history of the property and the amounts which in the course of appellant's operations had been found necessary for repairs and replacements. On the facts disclosed by the extensive evidence, the Secretary concluded that $80,000 was an adequate amount to be included in appellant's annual expenses "to cover repairs and provision for depreciation reserve". The Secretary had found that the amount expended for repairs on appellant's used and useful property for the preceding ten years had averaged about $38,500 a year. This finding does not appear to be contested, and from it appellant concludes that the Secretary has allowed the remainder of $80,000, or $41,500, to be carried an-

nually to the depreciation reserve account. Appellant insists that the yearly depreciation allowance should be not less than $100,000.

On December 31, 1932, appellant had accumulated a depreciation reserve of $1,771,063. This reserve had been accumulated since 1914. In an appraisal made by the American Appraisal Company in 1922, on the basis of cost of reproduction new, the then existing depreciation was estimated at $621,171 and a reserve of that amount was then provided by a surplus adjustment. From that time until 1932 appellant set aside from $120,000 to $130,000 annually making a total provided for depreciation since 1914 of about $1,887,000. In that entire period, by the computation of the Government which does not seem to be controverted, there had been charged against the depreciation reserve for retirements only about $116,405, of which about $103,500 were for retirements in the period 1922 to 1932, inclusive. The Government contends that the structural property in the pen areas, embracing pens, fences, runways and other yard structures, had been kept in proper operating condition principally by ordinary repairs and piecemeal replacements. The Government argues that the cost of reproduction new of this part of the property is approximately one-half of the reproduction cost of the entire property, and that from 1916 to 1932 the value of that portion of the property which was retired amounted to about $40,000. Appellant states that in 1926 to 1930, inclusive, the amount of pen structures which were retired was $41,639. On the other hand, it appears that the amount set up for depreciation on that class of assets was over $600,000.

Whatever may be said of this or that detail, it is quite clear that the amounts carried annually to the depreciation reserve were excessive. The Government's analysis tends to show that an average of approximately $47,000 annually would have been sufficient to take care of the repairs, maintenance and retirements during the period for which the financial history of appellant is available, and that the Secretary's allowance of $80,000 for both repairs and depreciation reserve is about $33,000 in excess of the amount shown to be actually required on the basis of that experience.

In the light of appellant's practice in accumulating an excessive reserve by its charges to operating expenses, a close examination was called for and a considerable deduction in the amount of such allowances in fixing reasonable rates was necessary. We have had

occasion recently to discuss the general question of depreciation reserves at some length (*Lindheimer* v. *Illinois Telephone Co.*, 292 U. S. 151) and we need not repeat what was there said. The question now presented is one of sound judgment upon the present record. We agree with the District Court that the Secretary endeavored to reach a fair conclusion and that the Government's analysis is persuasive. The argument that the Secretary employed the sinking fund method and upon that basis made an inadequate allowance does not find support in his findings. It is apparent that he sought to make an allowance which according to the nature of the property and appellant's experience would be adequate to cover repairs and replacements with a further provision to maintain a reasonable depreciation reserve. The evidence and appellant's contentions with respect to it do not satisfy us that the Secretary reached an unjustified result.

Income.—The Secretary allowed seven per cent. as the rate of return and appellant presents no complaint as to that. *Wabash Electric Co.* v. *Young*, 287 U. S. 488, 502; *Los Angeles Gas Co.* v. *Railroad Commission, supra*, p. 319. Applying the rates he fixed, the Secretary estimated the annual gross income at $621,831, and operating expenses, including the contribution to depreciation reserve as above stated, at $426,267, leaving a net balance of $195,564, slightly over seven per cent. on the fair value of the property.

Appellant's revenue is derived from yardage charges, from the sale of feed and bedding, and from special services. The Secretary made no change in the charges for miscellaneous services, such as loading and unloading, dipping and spraying, cleaning and disinfecting, etc. The revenue from these services was estimated at $90,500. The profit on sales of feed and bedding was estimated at $82,800. The yardage revenues are derived from charges (1) for yarding livestock arriving fresh from the country, (2) for yarding livestock resold or reweighed for purpose of sale, and (3) for the use of feed lot facilities. The reductions directed by the Secretary were in (1) and (2) and the revenue from the new rates for these services was estimated at $412,775. As to (3), for livestock held in the feed lots, the Secretary provided for an increase of charges, fixing maximum rates estimated to produce a revenue of $35,756.

It appears that formerly the feed lots were leased and on the first hearing before the Secretary their value was excluded from

the rate base. After 1930 they were operated under appellant's supervision and appellant filed its rates for their use. Accordingly, on the second hearing, the Secretary found that the feed lots were used and useful and included them in the rate base. The principal "feeding business" is the feeding of sheep. The increase in rates, for which the Secretary provided, was from 15 cents and 35 cents per head for cattle (depending upon the use of sheds and other enclosures) to 60 cents, and from 5 cents per head for hogs and sheep to 38 cents. Despite the increase, appellant contends that the order as to feed lot charges is void; that there were no findings to support it and no true hearing, that the evidence did not sustain the Secretary's conclusions, and that although the order was based upon a finding of unjust discrimination, there was no alternative permitted in removing it.

It is manifest, however, that when the feed lots were brought into the rate base, it was appropriate that the reasonableness of the charges for their use should be considered. This was part of the subject before the Secretary. In the order for reopening the proceeding, the Secretary had stated that a general inquiry would be made "into the reasonableness and lawfulness of each and every rate and charge . . . stated in any and all schedules of rates and charges filed by respondent" (appellant here). The Secretary found that "under the existing schedule shippers of livestock who consign their animals to commission men" were charged more for the use of appellant's facilities "in handling such livestock for a shorter period of time" than those who used the "feed lots for a much longer period of time". The Secretary found that the existing rates were "unreasonable and unjustly discriminatory". The feed lots were embraced in the tracts the value of which was estimated on a unit basis. The findings show appellant's operating expenses. We find no merit in the contentions that there was a lack of notice, or a lack of evidence as to the use of the feed lots or as to the discriminatory effect of the existing rates. We do not think that the decisions cited as to the affording of an alternative for the removal of discrimination are applicable to the present case. For the Secretary's action here was to provide for a reasonable charge for the use of the feed lots, so that those who did not use them should not bear an unreasonable burden. Whether appellant would be able to obtain the estimated revenue from the increased rates should be determined by a fair test of the permitted charges.

The reductions by the Secretary were in the charges for yardage services. The Secretary made different reductions for rail and truck shipments, and this differentiation is challenged. For example, under the existing rates, appellant's charge was 35 cents per head of cattle received by rail and 40 cents per head received by truck. The Secretary reduced the charge to 27 cents as to the former and to 35 cents as to the latter. There are differences in the two sorts of receipts in that in the one case there is a loading and unloading charge and, as detailed testimony showed, cattle received by rail consumed, as a rule, more feed than those received by truck. The evidence disclosed the services rendered in the case of cattle and other livestock, and the question is simply as to a fair determination in the light of all the circumstances. If the rates as prescribed were not confiscatory, the classification of rates was clearly within the Secretary's statutory authority.

There is a separate contention with respect to the rates for yarding livestock which was resold or reweighed for the purpose of sale. Appellant states that the Secretary's charges differed from its own in only one instance, that is, that the former are 1.5 cents per head lower on calves, but as the number of calves resold is negligible, that difference would not appreciably affect appellant's income. Appellant's tariff provided that on livestock resold in the commission division, there would be an additional charge of one-half the yardage charges. The Secretary found that despite this limitation, appellant in practice had imposed the charge on other resales, if they did not involve livestock "to go to the country", that is, bought by farmers to be fed. The Government's contention is that the practice lacked uniformity. The Secretary concluded that to impose the charge on resales in the commission division, but not on those in the traders division or elsewhere in the yard, was unreasonable and constituted an unjust discrimination. Appellant insists that the Secretary over-estimated the income from this source by $20,803. The controversy is over the number of livestock to which the charges for resales or reweighs for the purpose of sale would apply. The Secretary made a general estimate. He also found the number of head to which the charge would have been applicable in 1931 and 1932, and his estimate for the future was less than the average of those years. Appellant challenges the correctness of the computation and says that it rests upon an erron-

eous assumption that "order buyers" would pay a resale charge. The Government insists that the criticism is unjustified and points to evidence which is said to demonstrate conclusively that the Secretary's figures as to resales and reweighs are correct, and that appellant's argument is based on an application of the prescribed rates to "the wrong volume". It is unnecessary to recite the evidence. We think the Government substantiates its point.

The remaining question is with respect to the effect of the reduction of the other yardage charges, that is, for the yarding of livestock arriving fresh from the country; and, then, whether upon the whole case there would be such a deficiency in revenue as to establish confiscation. The revenue, of course, depends upon the quantity of livestock handled. The Secretary considered the fluctuation in receipts for a period of twenty-four years. The Government points to the statistical analysis as showing that cyclical fluctuations are characteristic of the business and that years of decline have been followed normally by an upward swing. The Secretary examined the actual receipts of each sort of livestock for the six years 1927 to 1932, inclusive. He did not attempt to make an exact prediction. Nor did he take an average of the six years. He took into consideration the lower volume of business in the later part of the period and made an estimate of the probable receipts which cannot be considered unfair. It was not an unsupported prophecy (compare *West Ohio Gas Co.* v. *Public Utilities Commission,* 294 U. S. 79, 82), but rather an endeavor to perform the essential duty of making "an honest and intelligent forecast" in view "of all the relevant circumstances". *Southwestern Bell Telephone Co.* v. *Public Service Commission,* 262 U. S. 276, 278. Applying the factors thus arrived at, the Secretary found that the prescribed rates would yield revenue sufficient to give the return above mentioned.

Appellant criticises the Secretary's estimates and insists that the prescribed rates would have been confiscatory during the entire period which the Secretary considered, making separate calculations for the period 1927 to 1931, and for 1932. The Government in turn points to necessary corrections in appellant's statements both of income and expenses and with those adjustments shows that under the prescribed rates appellant would have had an average yearly net return, for 1927 to 1931, of approximately $266,237, or about 9.7 per cent., and for the six-year period, 1927 to 1932, ap-

proximately $247,698, or about 9 per cent., on the fair value of its property as found. And while considering it to be improper to take the year 1932—the worst year of the depression period—as the basis for estimating return, the Government urges that, even in the abnormal conditions of that year, the prescribed rates would have produced a net return of 5.67 per cent.

Appellant seeks to buttress its case by reference to results of operations in later years. Its brief attempts to present the transactions of 1935. But there is no evidence properly before us save that contained in the record before the Secretary. Upon that record appellant stood in the District Court, and upon that record appellant must stand here. The hearing before the Secretary, held in 1933, necessarily proceeded upon an examination of the operations of the preceding years. The Secretary examined the course of business for a period sufficiently long to afford a basis for a reasonable estimate with due regard to the years preceding, and those during, the depression. His selection, and the use he made of it, is not open to any sound criticism. If the operations of later years show that the rates have become unreasonably low, appellant has its remedy. It has had, and still has, opportunity to apply to the Secretary of Agriculture for a modification of the prescribed charges. The only request for reopening the proceeding or for an adjustment of the rates, so far as now appears, was made early in 1934 prior to the order in question and before any adequate test of the rates.

We conclude that the appellant has failed to prove confiscation and the decree of the District Court is affirmed.

Affirmed.

Mr. Justice ROBERTS concurs in the result.

SUPREME COURT OF THE UNITED STATES.

No. 497.—October Term, 1935.

St. Joseph Stock Yards Company, Appellant, vs. United States and the Secretary of Agriculture. } Appeal from the District Court of the United States for the Western District of Missouri.

[April 27, 1936.]

Mr. Justice Brandeis, concurring.

I agree that the judgment of the District Court should be affirmed; but I do so on a different ground.

The question on which I differ was put thus by the District Court: "If in a judicial review of an order of the Secretary his findings supported by substantial evidence are conclusive upon the reviewing court in every case where a constitutional issue is not involved, why are they not conclusive when a constitutional issue is involved? Is there anything in the Constitution which expressly makes findings of fact by a jury of inexperienced laymen, if supported by substantial evidence, conclusive, that prohibits Congress making findings of fact by a highly trained and especially qualified administrative agency likewise conclusive, provided they are supported by substantial evidence?" 11 F. Supp. 322, 327.

Like the lower court, I think no good reason exists for making special exception of issues of fact bearing upon a constitutional right. The inexorable safeguard which the due process clause assures is not that a court may examine whether the findings as to value or income are correct, but that the trier of the facts shall be an impartial tribunal; that no finding shall be made except upon due notice and opportunity to be heard; that the procedure at the hearing shall be consistent with the essentials of a fair trial; and that it shall be conducted in such a way that there will be opportunity for a court to determine whether the applicable rules of law and procedure were observed.

Suits to restrain or annul an order of the Secretary of Agriculture are governed by the provision which Congress has made for

reviewing orders of the Interstate Commerce Commission. *Tagg Bros. & Moorhead* v. *United States,* 280 U. S. 420, 432-433, 442-444. That provision does not, in my opinion, permit a district court to set aside an order on the ground that the Secretary erred in making a finding of fact; and the jurisdiction of this Court to review its judgment is necessarily subject to the same limitation. As the District Court concluded that no applicable rule of law was disregarded by the Secretary; that for his findings there was ample support in the evidence; that taken together they support his conclusion that the rates are compensatory; and that the proceeding was in no respect irregular, it was in duty bound to dismiss the bill without enquiring into the correctness of his findings of subsidiary facts.

First. An order of the Secretary may, of course, be set aside for violation of the due process clause by prescribing rates which, on the facts found, are confiscatory. For the order of an administrative tribunal may be set aside for any error of law, substantive or procedural. *Interstate Commerce Commission* v. *Union Pacific R. R.,* 222 U. S. 541, 547. Moreover, where what purports to be a finding upon a question of fact is so involved with and dependent upon questions of law as to be in substance and effect a decision of the latter, the Court will, in order to decide the legal question, examine the entire record, including the evidence if necessary, as it does in cases coming from the highest court of a State. Compare *Kansas City Southern Ry.* v. *Albers Commission Co.,* 223 U. S. 573, 591; *Cedar Rapids Gas Light Co.* v. *Cedar Rapids,* 223 U. S. 655, 668-669. It may set aside an order for lack of findings necessary to support it, *Florida* v. *United States,* 282 U. S. 194, 212-215; or because findings were made without evidence to support them, *New England Divisions Case,* 261 U. S. 184, 203; *Chicago Junction Case,* 264 U. S. 258, 262-266; or because the evidence was such "that it was impossible for a fair-minded board to come to the result which was reached", *San Diego Land & Town Co.* v. *Jasper,* 189 U. S. 439, 442; or because the order was based on evidence not legally cognizable, *United States* v. *Abilene & Southern Ry.,* 265 U. S. 274, 286-290; or because facts and circumstances which ought to have been considered were excluded from consideration, *Interstate Commerce Commission* v. *Northern Pacific Ry.,* 216 U. S. 538, 544-545; *Northern Pacific Ry.* v. *Department of Public Works,* 268 U. S. 39, 44; or because facts and circumstances were considered

which could not legally influence the conclusion, *Interstate Commerce Commission* v. *Diffenbaugh,* 222 U. S. 42, 46-47; *Florida East Coast Ry.* v. *United States,* 234 U. S. 167, 187; or because it applied a rule thought wrong for determining the value of the property, *St. Louis & O'Fallon Ry.* v. *United States,* 279 U. S. 461. These cases deal with errors of law or irregularities of procedure.

Second. The contention of the appellant is that the Secretary of Agriculture erred in making findings on which rest his conclusion that the rates prescribed are compensatory. The matters here in controversy are questions of fact—subsidiary issues, about 63 in number, bearing upon two main issues of fact: What is the "value" of the property used and useful in the business? What will be the income earned on that valuation if the prescribed rates are put into force?

By the Packers and Stockyards Act, the duty of investigating and determining the facts was committed by Congress to the Secretary. It is not disputed that ordinarily his findings made upon substantial evidence in properly conducted proceedings are conclusive. *Tagg Brothers & Moorhead* v. *United States,* 280 U. S. 420, 444. This Court has consistently declared in cases arising under the Interstate Commerce Act, that to "consider the weight of the evidence is beyond our province", *Western Paper Makers' Chemical Co.* v. *United States,* 271 U. S. 268, 271; *Chicago, R. I. & Pac. Ry.* v. *United States,* 274 U. S. 29, 33-34; and that courts have no concern with the correctness of the Commission's reasoning, with the soundness of its conclusions of fact, or with the alleged inconsistency of the findings with those made in other proceedings, *Virginian Ry.* v. *United States,* 272 U. S. 658, 663, 665-666. Compare *New York & Queens Gas Co.* v. *McCall,* 245 U. S. 345, 348; *Georgia Ry. & Power Co.* v. *Railroad Commission,* 262 U. S. 625, 634; *Silberschein* v. *United States,* 266 U. S. 221, 225; *Ma-King Co.* v. *Blair,* 271 U. S. 479, 483.

The cases are numerous in which the attempt was made to induce this Court to annul an order of the Commission for error of fact; but in every case relief was denied. See *St. Louis & O'Fallon Ry.* v. *United States,* 279 U. S. 461, 493, n. 8. In this case also, the Court refuses to set aside the order. But it declares that an exception to the rule of finality must be made, because a constitutional issue is involved; and that the Court, weighing the evidence, must in its independent judgment determine the correctness of

the findings of fact made by the Secretary. That view finds support in *Ohio Valley Water Co.* v. *Ben Avon Borough,* 253 U. S. 287, and in general statements made in *Manufacturers Ry. Co.* v. *United States,* 246 U. S. 457, 488-490, and other cases; but it is inconsistent with a multitude of decision in analogous cases hereafter discussed.

Third. The Fifth Amendment, like the Fourteenth, declares that property may not be taken without due process of law. But there is nothing in the text of the Constitution (including the Amendments) which tells the reader whether to constitute due process it is necessary that there be opportunity for a judicial review of the correctness of the findings of fact made by the Secretary of Agriculture concerning the value of this property or its net income. To learn what the procedure must be in a particular situation, in order to constitute due process, we turn necessarily to the decisions of our Court. These tell us that due process does not require that a decision made by an appropriate tribunal shall be reviewable by another. *Pittsburgh, etc., Ry.* v. *Backus,* 154 U. S. 421, 426-427; *Reetz* v. *Michigan,* 188 U. S. 505, 508; *Dohany* v. *Rogers,* 281 U. S. 362, 369. They tell us that due process is not necessarily judicial process. *Murray's Lessee* v. *Hoboken Land & Improvement Co.,* 18 How. 272, 280; *McMillen* v. *Anderson,* 95 U. S. 37, 41; *United States* v. *Ju Toy,* 198 U. S. 253, 263. And they draw distinctions which give clear indication when due process requires judicial process and when it does not.

The first distinction is between issues of law and issues of fact. When dealing with constitutional rights (as distinguished from privileges accorded by the Government, *United States* v. *Babcock,* 250 U. S. 328, 331) there must be the opportunity of presenting in an appropriate proceeding, at some time, to some court, every question of law raised, whatever the nature of the right invoked or the status of him who claims it. The second distinction is between the right to liberty of person and other constitutional rights. Compare *Phillips* v. *Commissioner,* 283 U. S. 589, 596-597. A citizen who claims that his liberty is being infringed is entitled, upon habeas corpus, to the opportunity of a judicial determination of the facts. And, so highly is this liberty prized, that the opportunity must be accorded to any resident of the United States who claims to be a citizen. Compare *Ng Fung Ho* v. *White,* 259 U. S. 276, 282-285, with *United States* v. *Ju Toy,* 198 U. S. 253, and *Tang Tun* v. *Edsell,* 223

U. S. 673, 675. But a multitude of decisions tells us that when dealing with property a much more liberal rule applies. They show that due process of law does not always entitle an owner to have the correctness of findings of fact reviewed by a court; and that in deciding whether such review is required, "respect must be had to the cause and object of the taking, whether under the taxing power, the power of eminent domain, or the power of assessment for local improvements, or none of these: and if found suitable or admissible in the special case, it will be adjudged to be 'due process of law' ". Mr. Justice Bradley, in *Davidson* v. *New Orleans,* 96 U. S. 97, 107.

Our decisions tell us specifically that the final ascertainment of the facts regarding value or income may be submitted by Congress, or state legislatures, to an administrative tribunal, even where the constitutionality of the taking depends upon the value of the property or the amount of the net income. Thus:

(a) No taking of property by eminent domain is constitutional unless just compensation is paid. But in condemnation proceedings the value of the property, and hence the amount payable therefor, need not be determined by a court. "By the Constitution of the United States, the estimate of the just compensation for property taken for the public use, under the right of eminent domain, is not required to be made by a jury; but may be entrusted by Congress to commissioners appointed by a court or by the executive, or to an inquest consisting of more or fewer men than an ordinary jury." *Bauman* v. *Ross,* 167 U. S. 548, 593. In *Long Island Water Supply Co.* v. *Brooklyn,* 166 U. S. 685, 695, it was said that "there is no denial of due process in making findings of fact by the triers of fact, whether commissioners or a jury, final as to such facts, and leaving open to the courts simply the inquiry as to whether there was any erroneous basis adopted by the triers in their appraisal, or other errors in their proceedings." In *Crane* v. *Hahlo,* 258 U. S. 142, 148, the Court said in applying the same rule to a statute which allowed a judicial review of the facts only in case of "lack of jurisdiction, or fraud, or wilful misconduct on the part of the members of the Board": "This afforded ample protection for the fundamental rights of the plaintiff in error, and the taking away of the right to have examined mere claims of honest error in the conduct of the proceeding by the Board did not invade any federal constitutional right." See also, *United States* v. *Jones,* 109 U. S.

513, 519; *Backus* v. *Fort Street Union Depot Co.*, 169 U. S. 557, 569.

(b) No taking of property by taxation is constitutional unless the exaction is laid according to value, income or other measure prescribed by law. But Congress has, with the sanction of this Court, broadly given finality to the determination by the Board of Tax Appeals of the facts concerning income. By its legislation the jurisdiction of courts is limited to deciding "whether the correct rule of law was applied to the facts found; and whether there was substantial evidence before the Board to support the findings made." *Helvering* v. *Rankin*, 295 U. S. 123, 131; *Old Mission Portland Cement Co.* v. *Helvering*, 293 U. S. 289, 294. Compare *Cheatham* v. *United States*, 92 U. S. 85, 88-89. No court may pass upon the correctness in fact of any finding of the Board.

(c) The due process clause is not violated by giving in tariff acts finality to the valuations made by appraisers of imported merchandise belonging to American citizens. *Hilton* v. *Merritt*, 110 U. S. 97, 107. "It was certainly competent for Congress," said the Court in *Passavant* v. *United States*, 148 U. S. 214, 219, "to create this board of general appraisers, called 'legislative referees' in an early case in this court, (*Rankin* v. *Hoyt*, 4 How. 327, 335,) and not only invest them with authority to examine and decide upon the valuation of imported goods, when that question was properly submitted to them, but to declare that their decision 'shall be final and conclusive as to the *dutiable value* of such merchandise against all parties interested therein.'"

(d) The due process clause is not violated by legislation which requires a fire insurance policy to provide that the amount of the loss (and hence values) shall be determined by a board of appraisers; and that their decision, if not grossly excessive, or inadequate, or procured by fraud, shall be conclusive as to the amount of the loss. *Hardware Dealers Mutual Fire Insurance Co.* v. *Glidden Co.*, 284 U. S. 151.

(e) The due process clause is not violated by giving finality to assessments of value made for the purpose of *ad valorem* taxation, although in those proceedings the opportunity for a hearing is far less ample than under the statute here in question. Compare *State Railroad Tax Cases*, 92 U. S. 575, 610; *Kentucky Railroad Tax Cases*, 115 U. S. 321; *King* v. *Mullins*, 171 U. S. 404, 429-431.

As we said in *San Diego Land & Town Co.* v. *Jasper*, 189 U. S. 439, 446: "We do not sit as a general appellate board of revision for all

rates and taxes in the United States"; in *Coulter* v. *Louisville & Nashville R. R.*, 196 U. S. 599, 607: "Of course, no court would venture to intervene merely on the ground of a mistake of judgment on the part of the officer to whom the duty of assessment was entrusted by the law", and In *Chicago, Burlington & Quincy Ry.* v. *Babcock*, 204 U. S. 585, 598, we said of valuations made by the State Board of Equalization and Assessment: "Within its jurisdiction, except, as we have said, in the case of fraud or a clearly shown adoption of wrong principles, it is the ultimate guardian of certain rights. The State confided those rights to its protection and has trusted to its honor and capacity as it confides the protection of other social relations to the courts of law. Somewhere there must be an end."

Answering the suggestion of possible error in the final action of a board in valuing and assessing railroad property, the Court said in *Kentucky Railroad Tax Cases*, 115 U. S. 321, 335: "Such possibilities are but the necessary imperfections of all human institutions, and do not admit of remedy; at least no revisory power to prevent or redress them enters into the judicial system, for, by the supposition, its administration is itself subject to the same imperfections." In *Crane* v. *Hahlo*, 258 U. S. 142, 148, the Court intimating that even judges may err in their determinations of fact, held that legislators might, in proceeding for the taking of property, act on "the policy that the greater good is sometimes served by making certain classes of decisions final and ending litigation, even though in a particular case the individual is prevented by review from correcting some error which has injured him."

These cases show that in deciding when, and to what extent, finality may be given to an administrative finding of fact involving the taking of property, the Court has refused to be governed by a rigid rule. It has weighed the relative values of constitutional rights, the essentials of powers conferred, and the need of protecting both. It has noted the distinction between informal, summary administrative action based on *ex parte* casual inspection or unverified information, where no record is preserved of the evidence on which the official acted, and formal, deliberate quasi-judicial decisions of administrative tribunals based on findings of fact expressed in writing, and made after hearing evidence and argument under the sanctions and the safeguards attending judicial proceedings. It has considered the nature of the facts in issue, the character of the relevant evidence, the need in the business

(A) Insert on p. 16

of government for prompt final decision. It has recognized that there is a limit to the capacity of judges; and that the magnitude of the task imposed upon them, if there be granted judicial review of the correctness of findings of such facts as value and income, may prevent prompt and faithful performance. It has borne in mind that even in judicial proceedings the finding of facts is left, by the Constitution, in large part to laymen. It has enquired into the character of the administrative tribunal provided and the incidents of its procedure. Compare *Humphrey's Executor* v. *United States,* 295 U. S. 602, 628. And where that prescribed for the particular class of takings appeared "appropriate to the case, and just to the parties to be affected", and "adapted to the end to be attained", *Hagar* v. *Reclamation District,* 111 U. S. 701, 708, the Court has held it constitutional to make the findings of fact of the administrative tribunal conclusive. Thus, the Court has followed the rule of reason.

Fourth. Congress concluded that to give finality to the findings of the Secretary of Agriculture of the facts as to value and income is essential to the effective administration of the Packers and Stockyards Act. The *Ben Avon* case, and the statements in *Manufacturers Ry. Co.* v. *United States,* and casual references in other cases, should not lead us to graft upon the rule discussed, and so widely applied to other takings, a disabling exception applicable to rate cases. In none of the rate cases relied upon was there any reason given for denying to Congress that power; nor was there mention of the many decisions in which the power to prescribe finality was upheld. In none was there noted the distinction between challenging the correctness of findings of fact on which rest the conclusion as to confiscation, and challenging the conclusion of law as to confiscation on facts found. Here, some reasons have been offered in support of making the exception; but no reason given seems to me sound.

(a) It is urged that since Congress did not, and could not, delegate to the Secretary authority to prescribe a confiscatory rate, the facts in issue are jurisdictional and, hence, the Court must have power to review them. But, as was said in *Oklahoma Operating Co.* v. *Love,* 252 U. S. 331, 336: "The challenge of a prescribed rate as being confiscatory raises a question not as to the scope of the Commission's authority but of the correctness of the exercise

of its judgment." Therefore, *Crowell* v. *Benson*, 285 U. S. 22, has no application here.

(b) It is said that, since regulating rates is legislation, courts must have the same power to review facts which they possess in passing on the constitutionality of statutes—otherwise the supremacy of law could be impaired by delegation to an administrative tribunal of a power to make final determinations that the legislature lacks. To that argument there are several answers. It fails to note that a rate order may be complained of as being confiscatory, not because of error in a finding of value or income, but because the regulating body has, in reaching its conclusions, ignored established principles or incontestable facts, or been guilty of dishonesty or of other irregularity in the proceeding. Whenever a legislative body regulates a subject within the scope of its power, a presumption of constitutionality prevails, in the absence of some factual foundation of record for overthrowing the regulation, *O'Gorman & Young* v. *Hartford Fire Insurance Co.*, 282 U. S. 251, 257-258; and this rule extends to such action by an administrative body. *Pacific States Box & Basket Co.* v. *White*, 296 U. S. 176, 185-186. If there be in the record conflicting evidence as to the facts assumed, a court may not substitute its independent judgment for that of the legislative body. Mere denial of facts relied upon as conditioning the validity of legislation does not confer upon a court authority to decide what is called the truth; that is, the absolute existence in reality of facts alleged. "Where the constitutional validity of a statute depends upon the existence of facts, courts must be cautious about reaching a conclusion respecting them contrary to that reached by the legislature; and if the question of what the facts establish be a fairly debatable one, it is not permissible for the judge to set up his opinion in respect of it against the opinion of the lawmaker." *Radice* v. *New York*, 264 U. S. 292, 294. Here, the Court's duty is to determine merely whether there was evidence upon which reasonable men could have found as the Secretary did, with regard to value and income. Obviously the case at bar is not one in which "it was impossible for a fair-minded board to come to the result which was reached." Compare *Van Dyke* v. *Geary*, 244 U. S. 39, 48-49.

Moreover, argument based on the analogy of the review of statutes fails to note the distinction between determinations of fact made in a quasi-judicial proceeding surrounded by all the safe-

guards which attend trials by a court, and assumptions, or conclusions, as to facts made by a legislature on information which lacks those safeguards. It fails to note also the subsidiary character of the issue involved in a finding of value or income; and that it is only as to these subsidiary issues that finality of the finding is asserted here.

The supremacy of law demands that there shall be opportunity to have some court decide whether an erroneous rule of law was applied; and whether the proceeding in which facts were adjudicated was conducted regularly. To that extent, the person asserting a right, whatever its source, should be entitled to the independent judgment of a court on the ultimate question of constitutionality. But supremacy of law does not demand that the correctness of every finding of fact to which the rule of law is to be applied shall be subject to review by a court. If it did, the power of courts to set aside findings of fact by an administrative tribunal would be broader than their power to set aside a jury's verdict. The Constitution contains no such command.

Fifth. The history of this case illustrates that regulation cannot be effective unless the legality of the rates prescribed may, if contested, be determined with reasonable promptness. Six and one-half years have elapsed since the Secretary of Agriculture concluded that the rates of this utility were so high as to justify inquiry into their reasonableness, and nearly two years since entry of his order prescribing the reduced rates. In the judgment of the lower court and of this Court the attack upon the order reducing them was unwarranted. But the rates of 1929 have remained in force; and, despite the supersedeas and injunction bonds, there will be practically no redress for the wrong done to the business community throughout the long years in which excessive rates have been exacted. Neither party is chargeable with lack of diligence in the investigation or litigation; and there is no suggestion of undue delay on the part of either court. The long delay is due to other causes.

The investigation of the Company's rates was ordered October 9, 1929. The hearing began December 2, 1929. All the subsidiary enquiries of fact commonly incident to applying the rule of *Smyth* v. *Ames*, 169 U. S. 466, were entered upon. After the hearing had closed, the Company sought to have it reopened for the admission of evidence showing how the changed conditions of business since 1929 would affect plaintiff's income and the net return on the prop-

erty used. This application was refused by the Secretary; and he entered an order fixing maximum rates, which, on his valuation of the property and estimate of earnings, would have yielded a return of 7½ per cent. if in effect in 1928. Thereupon, the Company filed a bill in the District Court to set aside the order on the ground that it would deprive petitioner of its property in violation of the due process clause. That court heard additional evidence, as well as receiving the record of the proceedings before the Secretary. It considered, but did not pass on, the merits. For it set aside the order on the ground that the Secretary should have acceded to the request to reopen the hearings. *St. Joseph Stock Yards Co.* v. *United States*, 58 F. (2d) 290. The new hearing was begun January 10, 1933 and did not close until February 16, 1933. Thereafter, the Secretary entered the order here under review; and the second suit followed which is here on appeal.

Sixth. The abstract of record made before the Secretary and submitted to the District Court for review consisted of 1648 printed pages of evidence, besides 111 exhibits, many being extensive. Twenty-two witnesses testified orally. The 71 exhibits certified to this Court alone comprise 1358 pages of tabulations or like detail. In addition they contain 18 graphs, 30 maps or photographs, and 600 pages of reading matter. Consideration of most of the evidence presented to the Secretary was deemed essential to a proper determination by the District Court of the issues of fact now controverted. Consideration of most of the evidence introduced below is now deemed by counsel necessary for a proper decision of the case by this Court. The condensed narrative statement of the evidence other than exhibits fills 721 pages of the printed record in this Court. Seventy-one exhibits (although not required to be printed) were required to be transmitted to this Court as a part of the record before us. The number of pages of the evidence (including exhibits) before us bearing more or less specifically upon the question of confiscation is 2717. The total number of pages—briefs, exhibits, and evidence—before this Court is 3466.

The magnitude of the task involved in a judicial review which requires a determination by the Court, in its independent judgment, of the correctness of the findings of fact as to value and income which the Secretary made, cannot be measured by looking alone at the volume of the evidence. The multiplicity of the issues, and the character of the evidence bearing on them respectively, impose a peculiar burden. The findings as num-

bered and lettered by the Secretary total 215. The number of determinations of fact bearing upon confiscation involved in these findings is, roughly, 250, as gathered from the 108-page opinion of the Secretary. To decide whether any one of these 250 determinations of fact alleged to be erroneous is, or is not, correct, involves separate examination of the evidence relating specifically to it; since as to each of these determinations the reviewing court is called upon to make a decision, in the exercise of an independent judgment. Such a decision involves, in many cases, weighing specific evidence and resolving conflicts.

(a) There is controversy as to the extent to which property owned by the Company is used or useful. That enquiry relates to 52 different items. The testimony and exhibits bearing upon this issue occupy 194 pages. On it there are approximately 50 findings. The correctness of only one of these is controverted here.

(b) There is controversy as to the value of the land. It consists of 60 different tracts. The testimony and exhibits bearing upon their value occupy 596 pages (the exhibits number 20). On this issue there are about 10 findings. The correctness of 3 is controverted here, dealing with the land in a single "zone".

(c) There is controversy as to the value of the structures. It deals with reproduction costs; it requires separate consideration of materials and labor, of overheads and depreciation. The testimony and exhibits occupy 629 pages (the exhibits number 12). On these issues there are some 40 findings. Those dealing with depreciation are controverted here.

(d) There is controversy as to going concern value. The testimony and exhibits on this issue occupy 113 pages. The Secretary decided that no separate allowance should be made. That conclusion is controverted here.

(e) There are controversies as to the estimated income, as to the expenses, and as to charges. The testimony and exhibits bearing upon them occupy, in the aggregate, 663 pages (the exhibits number 42). On these issues there are approximately 140 determinations. Of these about 50 seem to be controverted here.

The decisions by the reviewing court on the correctness of many of these determinations must depend upon its judgment as to the credibility of the witnesses. For instance, the Company insists, as to the land in one zone, that it is worth, on the average 25 cents per square foot. The Secretary found it was worth 16 cents. On that issue 5 witnesses testified.

This case, like a laboratory experiment, presents the task of rate-regulation in its simplest form. The rates to be regulated are but few in number. The rate base is ordinary stockyard property small in extent as compared with some plants. The Secretary valued it at $2,743,000; and the Company claims it is worth $1,010,406 more. The Secretary found that, at the prescribed rates, the receipts would yield a net income of $195,564; the Company claims that it would not have been more than $81,026 in 1932 had these rates been in effect. But, under the prevailing view, an enquiry of the scope described was necessary, although involving hearings and lawsuits so protracted as to frustrate rate-regulation.

Seventh. The greater delay, and the cost, in rate investigations affecting the larger utilities, is illustrated by cases which have come before this Court in recent years.

(a) *Chicago Telephone Rates.* On September 13, 1921, the Illinois Commerce Commission, the regulating body, issued an order that the Company show cause why its rates should not be reduced. The hearing began November 17, 1921, and closed July 31, 1923. On August 16, 1923, the Commission entered an order reducing the rates, to become effective October 1, 1923. Before that date, enforcement was enjoined by the federal court, on a bill which charged that the rates prescribed were confiscatory. On April 30, 1934, this Court sustained the validity of the rate order entered August 16, 1923. Thus the rates became effective twelve and a half years after the commencement of the investigation; and nearly eleven years after they were prescribed.

On June 11, 1934, the District Court ordered the Company to reimburse consumers who had been charged excessive rates a sum estimated, in April, 1936, as almost $19,000,000; and directed that the lawyers who appeared for the consumers in and after 1929 should receive as fees an amount equal to 7½ per cent of the refunds. By March 31, 1936, 1,153,515 payments had been made. The task of making the refunds, only three-quarters complete, has required a special force of 2,000 of the Company's employees, and is said to have cost it (to November 30, 1935) $2,575,412.89. Over $2,100,000 remains to be ~~claimed~~ disposed of or paid.

, on July 23, 1934,

The transcript of evidence and arguments at the hearing before the Illinois Commission fills about 4500 pages; and there were besides more than 200 elaborate exhibits. The presentation of the evi-

dence before the District Court at the first hearing on the merits occupied more than two months, resulting in a printed record of over 3000 pages of testimony and 281 elaborate exhibits. The taking of depositions for presentation to that court on the second hearing on the merits, and other preparations for trial, took over a year. The hearing itself occupied five months. The record on the first appeal to this Court consisted of seven large volumes. The record of the additional evidence on the second appeal to this Court filled nine volumes; and the appellant's brief here, with appendix, nearly 700 pages.

The investigation of rates for Chicago continues. On July 10, 1934, the Commission asked the Company to show cause why its rates should not be reduced. The latter spent over a year and a half preparing its case for presentation to the Commission, at a cost, including a new appraisal and inventory, of more than $1,200,000. Hearings are now in progress.

For the history of the investigation and litigation, see in this Court: 269 U. S. 531; 282 U. S. 133; 283 U. S. 794; 283 U. S. 808; 292 U. S. 151; in the lower court: 39 F. (2d) 157; 38 F. (2d) 77; 3 F. Supp. 595; in the Commission: 7 Opinions and Orders of Ill. P. U. Comm. 1920, 888; 8 *id.* 1921, 372; 3 Opinions and Orders of Ill. Commerce Comm. 1924, 75-99; 6th Administrative Report of Directors of Departments, Ill. Commerce Comm. 1923, 975; 7th *id.* 1924, 1166; 17th Annual Report Ill. Commerce Comm. 1934, 3, 18, 42; 18th Annual Report Ill. Commerce Comm. 1935, 20. See also N. Y. Times, May 1, 1934, at 10; June 12, at 10; October 15, at 27; Report to Stockholders of Ill. Bell Telephone Co. 1935, 7, 8, 15.

(*b*) *New York telephone rates.* In the winter of 1919 the Company increased its rates. Protests followed; and on October 18, 1920, hearings thereon began before the Public Service Commission. On March 3, 1922, a temporary order slightly reducing certain rates issued. Enforcement was enjoined by the federal court on a bill which charged that the rates prescribed were confiscatory. Since that time, the rates prescribed, and to be prescribed, have been continuously under investigation and litigation.

Before the Commission there were, between 1920 and 1926, 189 days of hearings, 450 witnesses being examined orally. The evidence introduced fills, in the aggregate, 26,832 pages; and there were, in addition, 1,085 elaborate exhibits, one alone being

in 22 volumes. Hearings were also held from January ~~24~~, 1930, to April 18, 1930. The opinions of the Commission in these proceedings fill 396 pages. In the District Court the hearings before the master occupied ~~710~~ days and extended over a period of four years, ~~600~~ witnesses being examined orally. They were recalled a total of 688 times. The evidence of that hearing fills 36,~~582~~ pages; and there were in addition ~~3,288~~ exhibits. The decree below was entered November 7, 1929. The Company's counsel then labored two years in preparing a draft of the condensed narrative statement of the evidence required for the transcript of record on the appeal to this Court. On submitting this draft to counsel for the Commission, the City, and the State, many errors were discovered. On 3000 of the items, counsel disagreed; months were devoted to composing the differences; and finally the items on which counsel could not agree were settled by the lower court. On November 14, 1933, more than four years after entry of the decree appealed from, the Company filed here a record of 5700 pages. On Febuary 19, 1934, that appeal was dismissed.

On May 2, 1934, the Commission instituted a new investigation into the rates of the Company. Hearings began May 10, 1934, and are still going on. The subjects covered are again those required by the rule of *Smyth* v. *Ames*—reproduction cost, going value, depreciation, and so forth. Up to April 14, 1936, ~~85~~ hearings had been had, stretching through every month but one since the beginning of the enquiry. One hundred and forty-~~three~~ witnesses had been heard, and 10,84~~0~~ pages of testimony taken. The exhibits already introduced total 397, one being in ~~38~~ volumes.

For the history of the investigation and litigation, see in this Court: 261 U. S. 312; 262 U. S. 43; 291 U. S. 645; in the lower court: S. D. N. Y. No. 23-252, in equity, May 25, 1922 (not reported); 300 Fed. 822; 11 F. (2d) 162; 36 F. (2d) 54; in the Commission: 14th Annual Report, Pub. Ser. Comm. (2d Dist.) 1920, 79; Report Pub. Ser. Comm. 1921, 13, 234-254, 369-389, 398-407, 447-458; 1922, 15; 1923, 13, 93-214; 1924, 13, 127-138; 1925, 13; 1926, 17, 170-273; 1927, 14; 1928, 18; 1929, 16; 1930, 42, 134-145, 213-294; 1933, 11. See also Report of Pub. Ser. Comm. to State Senate Relative to Rates of N. Y. Telephone Co., Legis. Doc. No. 73, 1926 (254 pages); Report of Commission on Revision of N. Y. Pub. Ser. Comm. Law, Legis. Doc. No. 75, 1930, 28-31, 262-268;

"Your Company and the Rate Decision", a bulletin issued for the use of its employees by the N. Y. Telephone Co., 1930; Nathaniel Gold, "One More Telephone Decision", 15 Nat. Mun. Rev. 419; "The New York Telephone Rate Decision", 19 *id.* 180; "An Example of Rate Litigation and Its Significance", 23 *id.* 584; John Bauer, "An Example of Futility in Present Methods of Public Utility Regulation", 15 Am. Econ. Rev. 586; Leland Olds, "The Public Utility Issue", 24 Yale Review (N. S.) 704, 706-707; New York Times, May 2, 1934, at 1; May 11, at 1; May 17, at 25; September 21, at 25; February 27, 1935, at 20; March 30, at 7.

Eighth. In deciding whether the Constitution prevents Congress from giving finality to findings as to value or income where confiscation is alleged, the Court must consider the effect of our decisions not only upon the function of rate regulation, but also upon the administrative and judicial tribunals themselves. Responsibility is the great develc ^ en. May it not tend to emasculate or demoralize the rate-n king body if ultimate responsibility is transferred to others? To the capacity of men there is a limit. May it not impair the quality of the work of the courts if this heavy task of reviewing questions of fact is assumed?

The obstacles encountered in the case at bar and in the regulation of the rates of the large utilities are attributable, in the main, to the Court's adherence to the rule declared in *Smyth* v. *Ames* for determining the value of the property. In *Missouri ex rel. Southwestern Bell Telephone Co.* v. *Public Service Commission*, 262 U. S. 276, 289, I stated my reasons for believing that the Constitution did not require the Court to adopt that rule which so seriously impairs the power of rate-regulation. But since the decision of *Smyth* v. *Ames* is adhered to, there is the greater need of applying to cases in which rate-regulation is alleged to be confiscatory the rule of reason under which the Court has sanctioned, in other cases of taking, the legislative provision giving finality to quasi-judicial findings of value and income by administrative tribunals.

Surely, all must agree with the Secretary of Agriculture that: "If rate regulation is to be effective, there must come at some time an end of hearings and a decision of the questions involved." Congress concluded that a wealthy and litigious utility might practically nullify rate regulation if the correctness of findings by the

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regulating body of the facts as to value and income were made subject to judicial review. For that conclusion experience affords ample basis. I cannot believe that the Constitution, which confers upon Congress the power of rate-regulation, denies to it power to adopt measures indispensable to its effective exercise.

Mr. Justice STONE and Mr. Justice CARDOZO concurring in the result:

We think the opinion of Mr. Justice Brandeis states the law as it ought to be, though we appreciate the weight of precedent that has now accumulated against it. If the opinion of the Court did no more than accept those precedents and follow them, we might be moved to acquiescence. More, however, has been attempted. The opinion reexamines the foundations of the rule that it declares, and finds them to be firm and true. We will not go so far. The doctrine of *stare decisis*, however appropriate and even necessary at times, has only a limited application in the field of constitutional law. See the cases collected by Brandeis, J., dissenting, in *Burnet* v. *Coronado Oil & Gas Co.*, 285 U. S. 393, 407, 408. If the challenged doctrine is to be reconsidered, we are unwilling to approve it.

For the reasons stated by Mr. Justice BRANDEIS the decree should be affirmed.